
THE WEST BENGAL LEGISLATIVE

INDEX

TO

THE CALCUTTA GAZETTE

FROM JANUARY TO JUNE 1912.

PART IVA.

ABSTRACT OF THE PROCEEDINGS OF THE BENGAL LEGISLATIVE COUNCIL ASSEMBLED UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACT 1861 1892 AND 1909

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THE CALCUTTA GAZETTE

FROM JULY TO DECEMBER 1912.

PART IVA.

ABSTRACT OF THE PROCEEDINGS OF THE BENGAL LEGISLATIVE COUNCIL ASSEMBLED UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS 1861 1892 1909 AND THE GOVERNMENT OF INDIA ACT 1912

The Calcutta Gazette

EXTRAORDINARY.

SATURDAY, MARCH 30, 1912.

Government of Bengal.

Abstract of the Proceedings of the Legislative Council of the Lieutenant-Governor of Bengal assembled under the provisions of the Indian Councils Acts, 1861, 1892 and 1909.

THE Council met in the Durbar Hall at Belvedere on Thursday, the 21st March 1912, at 11 A.M.

Present:

The Hon'ble SIR FREDERICK WILLIAM DUKE, K.C.I.E., C.S.I., Lieutenant-Governor of Bengal, sub. *pro tem.*, *presiding*.

The Hon'ble MR. F. A. SLACKE, C.S.I., *Vice-President*.

The Hon'ble RAJA KISORI LAL GOSWAMI.

The Hon'ble MR. R. T. GREER, C.S.I., *offg.*

The Hon'ble MR. D. J. MACPHERSON, C.I.E.

The Hon'ble MR. E. W. COLLIN.

The Hon'ble MR. C. J. STEVENSON-MOORE, C.V.O.

The Hon'ble MR. E. P. CHAPMAN.

The Hon'ble MR. B. K. FINNIMORE.

The Hon'ble MR. J. H. KERR, C.I.E.

The Hon'ble Mr. H. L. Stephenson.

The Hon'ble Mr T. Butler.

The Hon'ble Mr. S. L. Maddox, C.S.I.

The Hon'ble Mr. G. W. Küchler, C.I.E.

The Hon'ble Mr. L. F. Morshead.

The Hon'ble Sir Frederick Loch Halliday, Kt., M.V.O., C.I.E.

The Hon'ble Mr. J. G. Cumming, C.I.E.

The Hon'ble Mr. C. H. Bompas.

The Hon'ble Mr. C. E. A. W. Oldham.

The Hon'ble Mr. H. McPherson.

The Hon'ble Babu Janaki Nath Bose.

The Hon'ble Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.

The Hon'ble Sir Frederick George Dumayne, Kt.

The Hon'ble Kumar Sheo Nandan Prasad Singh.

The Hon'ble Babu Bhupendra Nath Basu.

The Hon'ble Rai Sitanath Ray Bahadur.

The Hon'ble Lt.-Col. G. Grant Gordon, C.I.E.

The Hon'ble Sir Bijay Chand Mahtab, K.C.S.I., K.C.I.E., I.O.M., Maharajadhiraja Bahadur of Burdwan.

The Hon'ble Babu Kirtanand Sinha.

The Hon'ble Raja Rajendra Narayan Bhanja Deo.

The Hon'ble Babu Deba Prasad Sarbadhikari.

The Hon'ble Mr. J. G. Apcar.

The Hon'ble Mr. Norman McLeod.

The Hon'ble Mr. F. H. Stewart, C.I.E.

The Hon'ble Mr. Golam Hosein Cassim Ariff.

The Hon'ble Mr. Saiyid Wasi Ahmad.

The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din.

The Hon'ble Babu Hrishikesh Laha.

The Hon'ble Maulvi Saiyid Zahir-ud-din.

The Hon'ble Mr. D. J. Reid.

The Hon'ble Rai Sheo Shankar Sahay Bahadur.

The Hon'ble Mr. Madhu Sudan Das, C.I.E.

The Hon'ble Rai Baikuntha Nath Sen Bahadur.

The Hon'ble Khan Bahadur Maulvi Sarfaraz Husain Khan.

The Hon'ble Babu Braj Kishor Prasad.

THE ORISSA TENANCY BILL, 1912.

Clause 13 A.

The Hon'ble MR. MCPHERSON said:—

"Sir, I moved yesterday that clause 13 A be accepted by the Council as amended in item No. 1 A in the separate list laid on the table. Yesterday my object was not to rule out all the amendments which now appear in annexure A under the head clause 13 A. I have ascertained that the only amendments now standing under clause 13 A which Hon'ble Members desire to press are those numbered 28, 32 and 36 which stand in the name of the Hon'ble Rai Sheo Shankar Sahay Bahadur. I think it would be convenient if the Hon'ble Member first of all proposed these amendments and after they have been considered, then my proposal contained in item 1 A can be put to the Council. If any of the amendments proposed by the Hon'ble Member are accepted by the Council, necessary modifications can be made in clause 13 A which I have proposed in item 1 A. The amendments are equally applicable to that amended clause and to clause 13 A as it came from the Select Committee. It practically means that we shall consider the new clause 13 A as if it came in that form from the Select Committee."

The following motions were, by leave of the President, withdrawn:—

26. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "inheritance or succession" be substituted for the word "transfer" and the words "heir or successor" be substituted for the word "transferee" wherever they occur in clause 13 A (*1*), (*2*) and (*3*).

27. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "inheritance of or succession to" be substituted for the words "every transfer of" in line 1 of clause 13 A (*1*).

28. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the word "heritable" be inserted before the word "tenure" in line 1 of clause 13 A (*1*).

He said:—

My ground is that the clause as it stands in the Bill as re-drafted by the Select Committee makes all tenures of every kind and description heritable. This is very unjust. Let me take a concrete case. Suppose that the Maharajadhiraja Bahadur of Burdwan gave a lease to an old servant of his, or to a relation or to a friend for life, on a certain *jama*, on the distinct understanding that the grant will only be for life and that it will cease to exist on the death of the grantee and the tenure will revert to the Maharaja's estate after the death of the grantee. This is not a supposititous case, because we know that there are leases of this kind. I know that in the Banaili Raj there are some instances of these leases and there is nothing improper in granting a lease of that kind. Now, I will assume that the Maharajadhiraja of Burdwan has granted this lease for life, and I would ask Your Honour and Members of this Council to apply the law as laid down in this clause to a lease of that kind. The Council will find that the clause reads thus:—"In the case of every transfer of a tenure or portion of a tenure by succession the landlord shall be required to recognize the transfer provided that the transferee shall pay him a fee amounting to Rs. 2, excepting in the case of a *bajiaftidar* when the fee shall be Re. 1." So that, although there is that lease on that clear and distinct understanding that it shall revert to the Maharaja's estate after the death of the grantee, the landlord, that is, the Maharaja in this instance, shall be required, in other words he will be bound to recognize the transfer provided that the requisite sum of Rs. 2 is paid. Then the section runs thus:—"if in any such case the landlord refuses to accept the requisite fee the transferee or his successor in interest may deposit such fee with the Collector and at the same time apply for registration of the transfer. The Collector shall thereupon cause the fee to be delivered to the landlord in the prescribed manner and shall, by an order in writing, declare that the transfer has been duly registered.

If an application for the registration of the transfer of a tenure or portion thereof under sub-section (*1*) is not made within a period of six months from the date of the transfer, and if the registration fee authorized by the said sub-section is not deposited along with the application, the transferee or his successor in interest shall not be entitled to recover at any time after the expiry of the said period by suit or other proceedings any rent which may become due to him as the owner of such tenure or portion between the date of the transfer and the date of the application for registration."

I submit that under this clause the Maharaja may break his head against a stone wall, but he will not be able to turn out the heir of the person to whom he made the grant on the distinct understanding that it was only for life and will revert to the Maharaja's estate after the death of the grantee. He has got no remedy provided for in this clause. You do not provide even that he can go to the Collector and tell him, "well this is not a heritable tenure, this was given for life and his heir has no right whatever to be recognized by me." You do not even give the Collector jurisdiction; you stop there. Under the language of this clause, I doubt very much whether the Maharaja will be able to bring a suit in the Civil Court. So the Maharaja is debarred for ever from turning out a person who has no right to be there. I submit that this is a very preposterous proposition of law. If you had as you proposed in the Statement of Objects and Reasons, followed the Chota Nagpur Tenancy Act, you would have proceeded on safer grounds. Section 11 of the Chota Nagpur Tenancy Act provides:—

"When any tenure or portion thereof is transferred by succession, inheritance, sale, gift or exchange, the transferee or his successor in title shall cause the transfer to be registered in the office of the landlord to whom the rent of the tenure or portion is payable," etc., etc.

I need not read the whole section. Sub clause 5, however, is important. It reads thus:—

"Nothing in this section shall—

(*i*) validate a transfer of any tenure or portion thereof which by the terms upon which it is held, or by any law or local custom, is not transferable; or

(*ii*) affect the right of the landlord to resume a resumable tenure."

This clause in the Chota Nagpur Tenancy Act if adopted here would have covered all the objections which I have raised with regard to the absence of the word "heritable" in section 13 A (*1*).

In any case, I beg to submit that if you add the word "heritable" before "tenure," that will remove all the objections which I have pointed out.

The Hon'ble MR DAS said:—

"The amendment proposed really comes to this, at least the form in which it has been put by the Hon'ble Member really comes to this, that this clause, as it stands, removes all distinction between heritable and resumable tenures. There are certainly heritable tenures and resumable tenures, and I do not think that it can possibly be the intention of the Hon'ble Member in charge to remove that distinction, and make *resumable* tenures *heritable* tenures. But then we have to take into consideration by whom this Act is to be administered and what the wording of the Act is. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the applicant is the successor or not. And "successor" means a person who succeeds by testamentary or intestate succession, and the Collector has to decide whether simply he is the successor under the Act, or rather the clause as it stands. It does not authorize the Collector to go into the question whether the property does descend to the successor or not. The Collector simply decides whether the person is the successor or not. The Collector would think he is the successor, because in regard to some other property he is so. For instance, he has inherited his holdings and he has inherited his house. And as this Act has to be administered by Deputy Collectors, too, they might think, well he is the successor with regard to other properties; why should he not be successor in regard to this property as well. I think the

Hon'ble Member in charge of the Bill will agree with me that the wording as it stands is liable to be mistaken in that way, or rather misinterpreted in that way. Then, of course, neither this clause nor any amount of legislation done here can possibly remove the difference between *resumable* tenures and *heritable* tenures. But there we disagree with the Hon'ble Member in charge: he says, why use unnecessary words; words do not cost us much, neither does the printing, but it is much better to remove doubts."

The Hon'ble MR. MCPHERSON said:—

"Sir, I oppose this proposal because I think it is wholly unnecessary. I do not know personally of the existence of any tenures in Orissa that are not heritable. But I understand that the Hon'ble Member wishes to make a reservation in favour of temporary tenures that are only for a lifetime. He is thinking perhaps in particular of *ijara* tenures, which may not be heritable. The section as it stands will not apply to it, for if it be not heritable, there can be no transfer by succession, and the Collector will be unable to find that the applicant is the transferee by succession. If the thing is not transferable, there can be no transfer.

"I also oppose the addition because it was not deemed necessary by the Orissa Members when we discussed this clause, and I think they are the best judges of what is suited to their case. They have accepted the clause as re-drafted and that is sufficient guarantee that this addition is not required.

"Another objection is that if you put in a word like that, it merely tempts parties to raise the issue of heritability in every case. We do not want to encourage unnecessary litigation by suggesting to the parties that this question should be raised in every case. I think on the whole it would be better to leave the word out."

The Hon'ble MR. MADDOX said:—

"I agree with the Hon'ble Mr. McPherson, Sir, that it is unnecessary to include the words as proposed. It seems to me that the section does not apply to tenures of the kind that the Hon'ble Mover of the amendment has suggested. If cases relating to such tenures do come before the Courts at all, it will be argued either that there is no succession, the tenure having been granted for life, or that there cannot be any succession in tenures granted for life. I therefore agree with the Hon'ble Mr. McPherson in opposing the amendment."

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR said.

"I have only to draw the attention of the Hon'ble Member to the wording of the clause which runs thus:—'In the case of every transfer of a tenure or a portion of a tenure by succession.' It does not make any reservation with regard to any kind of tenure: it makes tenures of every kind and description transferable. The Hon'ble Member in charge of the Bill says that if it is not heritable then in that case this clause does not apply. How does he say this? Transfer by succession in this section means inheritance. So that whenever a tenure is herited by a legal heir, whether it is heritable or not, this section will apply. That is my objection. I would like some law officers of the Crown to interpret this. Of course if it does not include tenures of the kind which I have enumerated I have nothing to say, and I would not press this amendment."

The Hon'ble MR. CHAPMAN said:—

"I agree with the Hon'ble Mr. McPherson and the Hon'ble Mr. Maddox that it is undesirable to put unnecessary words into the clause. The clause obviously does not require it, and it is therefore quite unnecessary to retain the words. And experience will bear out that any unnecessary words in a clause are apt to be misused."

The Hon'ble MR. APCAR said:—

"Sir, may I ask this question. Will the insertion of this word prejudicially affect any of the parties concerned?"

The PRESIDENT said :—

"The Hon'ble Mr. Chapman has just pointed out that unnecessary words are generally prejudicial."

The motion was then put and lost.

The following were, by leave of the President, withdrawn :—

29. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that the words "a portion of a tenure" in lines 1 and 2 of clause 13 A (*1*) be omitted.

30. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "by succession" in line 2 of clause 13 A (*1*) be omitted.

31. The Hon'ble Mr. M. S. Das to move that the words "be required to" in line 2 of clause 13 A (*1*) be omitted.

32. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "or his successor in interest" in line 2 of clause 13 A (*2*) be omitted.

He said :—

"This clause deals with inheritance, but if we introduce these words 'successor in interest' it will apply not only to cases of inheritance, but also to cases of transfer by the heirs. Successor in interest is a very wide term: it does not mean only a person who succeeds by right of inheritance, but it also means a person who succeeds by, say, a right of gift, and apparently that is not the object of the Hon'ble Member in charge. The Hon'ble Member in charge of the Bill deals with inheritance in this clause, and with regard to transfer he has got another clause 13 C."

The Hon'ble MR. H. MCPHERSON said :—

"The apprehension of the Hon'ble Member is that the words 'successor in interest' may be interpreted as covering successor in interest by sale, or exchange or gift. There was not in my opinion any danger of this, because the Collector is to be satisfied that the applicant is the successor, that is, the successor by inheritance. The object of adding the words 'successor in interest' was to provide for a case in which there may have been more than one transfer by succession before the application for registration is made. A man may die and be succeeded by his son, and before the son has registered, he also may die and be succeeded by his son. I have, however, thought of endeavouring to meet the wishes of the Hon'ble Member by considering whether it would not be better to drop the words 'in interest' after the word 'successor', and use simply the word 'successor'. I have put the point to the Hon'ble the Legal Remembrancer, and he suggests that instead of the words 'successor in interest' we may make the point more clear by using the word 'heir.' Are you willing to accept this alterative ?"

The HON'BLE RAI SHEO SHANKAR SAHAY BAHADUR said :—

"Yes. I will move that instead of the words 'his successor in interest' the words 'his heir' be substituted."

The motion was then put in the amended form and agreed to.

The following motions were, by leave of the President, withdrawn :—

33. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "The Collector shall cause notices of the application to be fixed in the house of the tenure-holder and in the cutcherry of the landlord, and, after deciding any objection made by any person interested, shall thereupon" be substituted for the words "The Collector shall thereupon" in lines 4 and 5 of clause 13 A (*2*).

34. If motion No. 33 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "after giving notice to the landlord to appear and be heard" be inserted after the words "The Collector" in line 4 of clause 13 A (*2*).

35. The Hon'ble Babu Hrishikesh Laha to move that the words "after serving notice upon the landlord and hearing his objections, if any, decide whether the applicant is the successor or not, and, if he is satisfied that he is the successor" be substituted for the word "thereupon" in lines 4 and 5 of clause 13 A (*3*). The whole sentence, therefore, to read as follows:—

"The Collector shall, after serving notice upon the landlord and hearing his objections, if any, decide whether the applicant is the successor or not, and, if he is satisfied that he is the successor, cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered."

36. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "the landlord shall be entitled to recover the said registration fees by suit and" be inserted after the word "application" in line 5 of clause 13 A (*3*).

He said:—

"I beg to remove the misapprehension which may be in the mind of the Hon'ble Member with regard to the wording of my amendment. My object is that the landlord may be entitled to recover by suit the prescribed fee. I do not mean that the landlord will be entitled to recover rent from the tenants. The clause does not provide that the landlord shall be entitled to bring a suit to recover the amount of the requisite fees. It simply says that the tenant will pay. If the tenant does not pay, then in that case he will not be entitled to recover his rent from his under-tenant. It does not provide that the landlord shall include this fee in his claim for rent or separately bring a suit for it. What I propose is that the landlord should be authorized to recover these fees either by bringing a separate suit or including it in his suit for the recovery of the rent."

The Hon'ble Mr. H. McPherson said:—

"I do not know whether the Hon'ble Member has modified the words as they stand in his amendment. As it stands, the grammatical interpretation of the words is that if the application for registration be not made within six months, the superior landlord steps into the shoes of the under-landlord and is entitled to recover rent from the under-landlord's tenants. That, I understand, is not the object of the Mover, but that is the effect of his words. If the Council accept his idea, it will be necessary to alter his amendment to 'the landlord shall be entitled to recover the said registration fees by suit and—"

The Hon'ble Rai Sheo Shankar Sahay Bahadur said:—

"I am willing to add those words."

The Hon'ble Mr. H. McPherson said:—

"I regret that I cannot accept this proposal even when amended by the addition of the words 'the said registration fee' after 'recover,' though I have a certain amount of sympathy with its object. The idea is that if the successor does not come to the scratch and apply for registration, the landlord shall be able to press registration upon him and recover the fee. Under Act X of 1859 and under the Bill as amended we leave the transferee to take action and place him under certain disabilities if he neglects to do so. I think it is preferable to leave it at that for the present. When we have observed the working of the transfer sections for a few years, it will be possible to say whether they attain the desired object and to propose amendments if they fail. I do not think that the time has yet come to introduce an innovation of this sort. I therefore oppose the amendment."

The motion was then put in the amended form and lost.

The following motion was, by leave of the President, withdrawn:—

37. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that a new proviso be added after clause 13 A (*3*) as follows, namely:—

"Provided always that nothing in this section shall be construed to authorize a division of a tenure or distribution of the rent payable in respect thereof unless it is made with the express consent in writing of the landlord or of his agent duly authorized in that behalf."

1A. The Hon'ble Mr. H. McPherson moved that the following be substituted for sub-clauses (*1*) and (*2*) of clause 13 A, namely:—

(*1*) In the case of every transfer of a tenure or portion of a tenure by succession, the landlord shall recognize the transfer, provided that the transferee shall pay him a fee amounting to rupees two, except in the case of a *bajaftidar*, when the fee shall be rupee one.

(*2*) If in any such case the landlord refuses to accept the requisite fee, the transferee or his heir may deposit such fee with the Collector, and, at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the applicant is the successor or not; and, if satisfied that such applicant is the successor, he shall cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

The motion was put and agreed to

The Hon'ble MR. H. MCPHERSON said:—

"It is also necessary that I should move a small consequential amendment in sub-clause (*3*) where the same expression 'successor in interest' is used in the fifth line, the amendment being that 'heir' be substituted for 'successor in interest' in that line."

The motion was put and agreed to.

Clause 13 B.

The following motions were, by leave of the President, withdrawn:—

38. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that the words "or portions thereof" in line 2 of clause 13 B (*1*) and the words "or portion" in line 2 of the proviso to the same clause be omitted.

39. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or *sikmi zamindar*" be inserted after the words "*kharida jammabandi*" in line 3 of clause 13 B (*1*) (*b*).

40. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "or his successor in interest" in line 2 of clause 13 B (*2*) be omitted.

He said:—

"With your permission, Sir, I will move the following amended motion with regard to this section, that for the words 'successor in interest' in line 2 the word 'heir' be substituted."

The Hon'ble MR. H. MCPHERSON said:—

"I do not think the same considerations apply in this case, when we are delaying with transfers by sale, gift or exchange."

The motion was then, by leave of the President, withdrawn.

The following motions were, by leave of the President, withdrawn :—

41. If motion No. 38 be carried, the Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that the words "a portion thereof" in line 2 of clause 13 B (*3*) be omitted.

42. The Hon'ble Rai Sheo Shanker Sahay Bahadur to move that the words "the landlord shall be entitled to recover by suit and" be inserted after the word "application" in line 5 of clause 13 B (*3*).

43. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the following proviso be added after clause 13 B (*3*), namely :—

"Provided always that nothing in this section shall be construed to authorize a division of a tenure or distribution of the rent payable in respect thereof unless it is made with the express consent in writing of the landlord or of his agent duly authorized in that behalf."

Clause 13 C.

44. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that clause 13 C be omitted.

45. If motion No. 44 be not carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that for clause 13C (*1*), (*2*), (*3*) and the Explanation, the following be substituted, namely :—

13C. (*1*) Except as provided in section 13 B, every transfer by sale, gift or exchange of any tenure or portion of a tenure shall be invalid unless it was made with the consent of the landlord, or unless there is a custom, usage or customary right of such transfer without the consent of the landlord on payment of a fee being made to him.

(*2*) When any tenure or portion of a tenure is so transferred, with or without the consent of the landlord, as aforesaid, the landlord, on registration of the transfer in his office, shall be entitled to levy a registration fee as follows, namely :—

(*a*) In the case of a sale, Rupees twenty-five *per centum* or the market value of the tenure or portion of the tenure transferred :

Provided that, until sufficient reason to the contrary is shown, the market value shall be deemed to be the consideration money as shown in the deed or document affecting the transfer, or, where there is no such deed or document, the consideration money actually paid for the transfer.

(*b*) In the case of a gift or exchange, a fee six times the annual rental of the tenure or portion thereof, as the case may be, or, if rent be not payable in respect of the tenure or portion thereof—then a fee of Rupees ten :

Provided that, where rent is paid in kind and is fluctuating, the average yield to the landlord during five agricultural years preceding the sale shall, for the purposes of this section, be taken as the annual rental of the tenure or portion thereof.

(*3*) If, in any case, the landlord accepts the fee authorized by sub-section (*2*), his consent to the transfer shall be deemed to have been given.

(*4*) If, in any case, a dispute arises between the transferee and the landlord either with regard to the validity of the transfer or with regard to the fee payable for such transfer, the landlord or the transferee shall apply to the Collector who shall inquire into and decide the same.

(5) Nothing in this section shall affect the right of either party to bring a suit in the Civil Court to contest the correctness of the finding of the Collector with regard to the validity or otherwise of the transfer, but, subject as above and to any appeal or revision as provided for in this Act, the order of the Collector under this section shall be final.

(6) If, notwithstanding the order of the Collector to the contrary, the landlord refuses to accept the requisite fee, the transferee may deposit such fee with the Collector, who shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

(7) Nothing in this section shall be construed to authorize a division of a tenure or distribution of the rent payable in respect thereof unless it is made with the express consent in writing of the landlord or of his agent duly authorized in that behalf.

46. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "the landlord shall be entitled to recover by suit and" be inserted after the word "application" in line 5 of clause 13 C (4).

47. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that the words "or portion of a tenure" be omitted in clause 13 C (1) wherever they occur.

48. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "within six months from the date of transfer" be inserted after the word "shall" in line 4 of clause 13 C (1).

49. The Hon'ble Babu Hrishikesh Laha to move that the words "market value" be substituted for the words "consideration money" in line 2 of clause 13 C (1) (a).

50. If motion No. 47 be carried, the Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that the words "or portion" in lines 4 and 5 of clause 13 C (1) (b) be omitted.

51. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "recognized the transfer" be substituted for the words "accept the requisite fee" in lines 1 and 2 of clause 13 C (3).

52. The Hon'ble Babu Hrishikesh Laha to move the following amendments in clause 13 C (3), viz.:—

(i) that the words "transferee or his successor" be substituted for the word "landlord" in line 6;

(ii) that the words "to obtain registration of the transfer of the tenure or a portion thereof" be substituted for the words "to refuse his consent to the transfer" in line 7;

(iii) that the words "transferee or his successor" be substituted for the word "landlord" in line 8; and

(iv) that in the same line, the word "not" be omitted after the word "is."

The whole sentence, therefore, to read as follows:—

"The Collector, after giving notice to the landlord to appear and be heard, shall thereupon inquire and decide whether the transferee or his successor is entitled by custom, or for any other good and sufficient reason, to obtain registration of the transfer of the tenure or a portion thereof; and, if the Collector finds that the transferee or his successor is so entitled, he shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered."

53. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "tenure is transferable by custom without the consent of the landlord and whether the landlord has" be substituted for the words "landlord is entitled by custom, or for" in line 6 of clause 13 C (*3*).

54. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "tenure is so transferable and the landlord has no good or sufficient reason to refuse his consent" be substituted for the words "landlord is not so entitled" in line 8 of clause 13 C (*3*).

55. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "and any arrears of rent due" be inserted after the words "he shall cause the said fee" in line 9 of clause 13 C (*3*).

56. The Hon'ble Babu Hrishikesh Laha to move that the following proviso be added at the end of clause 13 C (*3*), namely:—

"Provided that nothing in this section shall confer the right of sub-dividing a tenure without the landlord's consent, and that the transfer of a portion of a tenure and the registration of the same by the landlord shall not be deemed to constitute a subdivision of the tenure. The holder of the tenure and the transferee of the portion thereof shall be jointly and severally liable to the landlord for the rent of the entire tenure."

57. If motion No. 52 be carried, the Hon'ble Babu Hrishikesh Laha to move that the Explanation to clause 13 C (*3*) be omitted.

58. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the Explanation to clause 13 C (*3*) be omitted.

59. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that the following be substituted for the Explanation to clause 13 C (*3*), namely:—

"*Explanation.*—The landlord may refuse registration of the transfer on the ground that there is no custom of transfer, unless it is shown that, by such custom, he is not entitled to refuse consent to the transfer of a tenure."

60. If motion No. 58 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "The landlord shall not be entitled to refuse registration of the transfer on the ground of custom, unless he can show that by such custom he is entitled to refuse consent to the transfer of tenures" in lines 1 to 4 of the Explanation to clause 13 C (*3*) be omitted.

61. If motions Nos. 58 and 60 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "The fact that the landlord is in the habit of charging fees on the registration of transfers of tenures shall not by itself be taken as proof that he is entitled by custom to refuse his consent to the recognition of transfers in individual cases" in lines 4 to 8 of the *Explanation* to clause 13 C (*3*) be omitted.

2A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the following be substituted for clause 13 C (*1*), namely:—

Transfer in other cases.

(*1*) In cases other than those covered by section 13 B, when any tenure or portion of a tenure is transferred by sale, gift or exchange, the transferee or his successor in interest shall apply to the landlord to whom the rent of the tenure or portion thereof is payable for registration of the transfer, and the landlord shall, in the absence of good and sufficient reason to the contrary,

allow the registration of the transfer. The fee payable on such transfer shall be—

(*a*) in the case of a sale, rupees twenty-five *per centum* of the consideration money, or the fee specified in clause (*b*), whichever is greater, and

(*b*) in the case of gift or exchange, a fee six times the annual rental of the tenure or portion thereof, as the case may be, or, if rent be not payable in respect of the tenure or portion, then a fee of rupees ten.

The motion was put and agreed to.

3A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the following be substituted for clause 13 C(*3*), namely :—

(*3*) If in any such case the landlord refuses to accept the requisite fee, the transferee or his successor in interest may deposit such fee with the Collector and, at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the tenure is transferable by custom without the consent of the landlord, and whether the landlord has any good and sufficient reason to refuse his consent to the transfer; and, if the Collector finds that the tenure is so transferable and that the landlord has no good and sufficient reason to refuse his consent to the transfer, he shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

The motion was put and agreed to.

4A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the *Explanation* to clause 13 C(*3*) be omitted.

The motion was put and agreed to.

New Clause 13 CC.

5A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the following new clause be added after clause 13 C :—

He said :—

"Before I read it out I wish to point out that I intend to make a very slight modification in the drafting of it. For the word 'thereof' in line 5 I have been advised that it would be better to substitute the words 'of the tenure'; and for the words 'of the same' in the last line I am advised that the word 'thereof' should be substituted. This is purely a drafting modification.

"I will now read the amendment as thus revised :—

13 CC.—The transfer of a portion of a tenure and the registration of the same under section 13 A, 13 B or 13 C shall not be deemed to constitute a division of the tenure. The transferee of such portion and the holder of the remainder of the tenure shall be jointly and severally liable to the landlord for the rent of the entire tenure, unless the landlord has consented, in the manner specified in section 91, to a division of the tenure or to a distribution of the rent thereof."

Effect of transfer of portion of a tenure.

The motion was put and agreed to.

New Clauses 13 D and 13 E.

62. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the following be inserted as clauses 13 D and 13 E, namely:—

"Fee on application under section 13 A, 13 B, 13 C or 25 A.

13 D. An application to the Collector under section 13 A, 13 B, 13 C or 25 A shall be accompanied by such fee, in addition to the fee payable to the landlord, as the Local Government may, by rule, direct."

"Return of landlord's fee.

13 E. If an application under section 13 A, 13 C or 25 A be disallowed, the Collector shall return the landlord's fee to the applicant."

He said:—

"The object of clause 13 D is that power may be given to recover the necessary costs that will be incurred on the hearing of applications, and issue of notices from the party who applies for registration. One beneficial effect of this will be that it will prevent bogus applicants from coming forward and worrying the Collector and landlord.

"The object of clause 13 E explains itself.

"I think there will be no opposition to these two additions."

The motion was put and agreed to.

Clause 6.

6 A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the figures and letter "13 E" be substituted for the figures and letter "13 C" in line 5 of clause 6 (*1*) (*ii*) and in line 3 of clause 6 (*1*) (*iii*).

He said:—

"Clause 6 refers to the provision that *bajiaftidars* shall be deemed to be tenure-holders for the purpose of these transfer clauses. Clauses 13 A to 13 C were the original transfer clauses. By these new additions they become clauses 13 A to 13 E."

The motion was put and agreed to.

Clause 25A.

77. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din moved that clause 25 A be omitted.

He said:—

This was unknown in the Bengal Tenancy Act.* It is altogether a new provision. It was never put in the Bill itself, and the public had no opportunity to offer their opinions with regard to this clause 25 A, nor were the opinions of the several associations ever asked on this clause. It appears that this clause 25 A enacts something which is not known even in the Bengal Tenancy Act.* The present clause gives to the tenant right of a transfer of a portion of a holding, although under the provisions of the Bengal Tenancy Act,* section 85, a transfer of the portion of the holding without the consent of the landlord is invalid, yet in the present clause there is no provision to safeguard against the transfer of a portion of a holding without the consent of landlord; rather there is an express provision that tenants will be at liberty to transfer the entire or a portion of their holdings.

The second objectionable feature of this clause is that the onus of proof of custom or usage has been thrown on the landlord. This is against the elementary principles of the provisions of the Indian Evidence Act.† In the Bengal Tenancy Act* there is section 183, and all such transfers of occupancy

* *i.e.*, Act VIII of 1885.
† *i.e.*, Act I of 1872.

holdings are regulated by the provisions laid down in section 83. In the present Bill you have a parallel clause 246, and it would be much better to leave the transfer of holdings of occupancy-rights to be regulated by clause 246 of this Bill.

Then, again, so far as the provisions of the Bengal Tenancy Act* are concerned, the onus has been thrown upon the transfer to show that the transfers are valid on account of there being the custom or usage of such transfers in the vicinity or in the locality itself, but in sub-clause (3) we find that the landlord will have to prove a negative thing. He will have to prove that there is a custom by which he can refuse to recognize such a transfer. This is altogether a novel thing

"My next objection with regard to this clause is that an appeal has been provided for to the Collector, from all orders passed by a subordinate officer, but no second appeal to the Commissioner has been allowed, although we find that a revisional power is given to the Commissioner under sub-clause (4) of clause 25 A. We are well aware of the virtues of such revisional jurisdiction of the Commissioners. When they are reluctant to interfere with the findings of the Lower Court in appeal, how could we expect any better thing on revision. Then, again, the parties have been given a right to go to the Civil Court, but a presumption has been provided to be given to the orders of the Collector. Now, the hands of the Civil Court ought not to have been fettered in this way. The party who is aggrieved by the order of the Revenue Court, if he goes to the Civil Court, will have to establish his case, but why should you give a presumptive value to the order passed by the Revenue Court? I have just read the re-drafted clause as well, but I find that there is no clause guarding against the transfer of a portion of the holdings, nor will it sufficiently meet all the objections which I have put forward before the Council.

"Then, again, so far as the onus of proof, the custom or usage is concerned, the re drafting clause is also not explicit. It leaves the matter in the dark, and there would be confusion hereafter as to whether in such matters the landlord has to prove or the transferee has to prove that there is such a custom. These are my grounds as to why I propose this amendment No 77. With these few words I move that clause 25 A be omitted altogether."

The Hon'ble Rai Sheo Shankar Sahay Bahadur said:—

"I have an identical motion on the list of business, and with your permission, Sir, would like to support the motion of my Hon'ble friend, Maulvi Saiyid Fakhr ud-din.

"This clause deals with the question of transfer of occupancy-rights. This is a subject, Sir, which has been discussed, considered and decided by eminent men from the time of the commencement of the British Government in this country. In the famous minute of Sir John Shore (afterwards Lord Teignmouth), dated 1789, attached to the Fifth Report of the Select Committee to the House of Commons, that authority laid down that the raiyats may acquire right of possession in the soil, but this right did not authorize them to transfer it, and it was so far distinct from a right of property. He, also, after fully considering the question as to whether the right of transfer should be given to the raiyats, thus concludes his observation:—

> "After weighing the above considerations, my opinion is that were the raiyats alone to be considered the privilege of transferring the lands held by permanent occupants should be vested in them. But as the zamindars and talukdars also claim consideration as their acknowledged rights would be infringed by conferring such privilege on the raiyats, and as this infringement does not seem essentially necessary for the ease and security of the latter, the privilege in question should not I think be given to the raiyats by the authority of Government, but allowed to be at any time voluntarily given or sold by the zamindars themselves"

"By the legislations that followed this famous minute no right of transfer was conceded to the occupancy-raiyats. Act X of 1859 also did not confer

* i.e., Act VIII of 1885.

such right. The matter again came up for consideration when a consolidated rent law for Bengal was taken up, and the Bill known as Recovery Rent Bill was introduced into the Legislative Council of the Lieutenant-Governor of Bengal on the 4th January, 1879. There was a provision in the Bill conferring such right on the tenants, as appears from the Proceedings of the Bengal Council, 1879 (pages 9 to 13). Sir Alexander Mackenzie strongly recommended this concession in favour of the raiyats. He said, "We have, I say, every reason to believe that to recognize the transferable character of the occupancy raiyat's tenure in Bengal will improve his position in many ways, and that he will in turn improve the land." This innovation recommended by Sir Alexander Mackenzie was strongly opposed by the Hon'ble Raj Kristo Das Pal Bahadur, as appears from the Proceedings of Council (pages 15 to 27). Though this Bill was referred to a Select Committee (on the 11th January, 1879), it was subsequently decided that the whole law should be consolidated by an Act of the India Council, and the Tenancy Bill was introduced in the Council of Governor General (on 2nd March, 1883), by the Hon'ble Mr. Ilbert. Under Mr. Ilbert's Bill the right of occupancy was transferable subject to certain rights reserved to the landlord. The Bill was referred to the Select Committee which after mature and deliberate consideration expunged this portion of the Bill. Sir Stuart Bayley, the Member in charge of the Bill, himself a warm advocate of conferring this right of transfer on the raiyats, in presenting the report of the Select Committee announced that an important change was made in regard to the transferability of occupancy rights, and that instead of legalizing it and regulating it by law, it was left to custom, and added that "the Council will not have to consider the schemes of pre-emption, registration and landlords' fees which occupied so much of the time and attention of the committee." Sir, though the matter was abandoned by Government, the Hon'ble Mr Amir Ali moved on the 5th March, 1885, an amendment similar to the provisions of the Bill now before you, to the effect that an occupancy-raiyat shall be entitled to transfer his holding, and where there is no custom of transfer the landlord shall be entitled to a fee of 10 *per cent.* on the purchase money. The only difference between the Hon'ble Mr. Amir Ali's motion in 1885 and the present Bill being that the landlord under this Bill is to get 25 *per cent.* instead of 10 *per cent.* as proposed by the Hon'ble Mr. Amir Ali. An interesting debate followed this amendment, and though some of the high officials freely gave out that in their opinion this right should have been conferred on the tenants, they refused to support the amendment of the Hon'ble Mr. Amir Ali. Some said that in the interests of the tenants themselves this right should not be conferred on them. His Honour the Lieutenant Governor of Bengal (Sir Rivers Thomson), who was himself strongly in favour of this right being conferred, concluded his speech by saying thus, "After much consideration the safer view has prevailed that the introduction of any provision like those which the Hon'ble Member has moved should not form part of our present legislation." His Excellency the Viceroy (Lord Dufferin), in winding up the debate from his place in Council, made these observations. His Excellency said:—

> 'In the first place we have to consider the matter from the point of view of right and equity. Sir John Shore, a contemporary authority upon the subject, has stated in the most positive manner that the occupancy-right does not include the right of the sale or transfer, and the Courts of Bengal, as I understand, have maintained this view. It is, therefore, a question as to how far we should be justified in giving an occupancy-tenant a right carrying a money value to which he has not hitherto been entitled by law, etc., etc.

The matter was then dropped. Sir, I have gone through these details to show that this is a question which has been thoroughly discussed, shifted and settled. Some officers, like the Hon'ble Member in charge of the Bill, have held that this right should be conferred. Others, like the Hon'ble Mr. Maddox, have held that in the interests of the tenants themselves this right if conferred instead of proving a boon to them will cause their ruin. Others have held that the Crown has no right to confer on the tenant a right which he never possessed and divest the landlord of his right which he has enjoyed and possessed ever so long. But after thorough discussion and mature

consideration they have all agreed, though by different process of reasoning, that the tenant has no such right except as a gift from his landlord or by long established custom and usage. This is the law laid down in the Bengal Tenancy Act.* One would have thought, Sir, that this question was concluded by authority and cannot be re-opened. Coming to recent legislation, the Chota Nagpur Tenancy Act† does not confer any such rights. With regard to the present legislation now before the Council, I find that the committee which sat at Cuttack to consider the matter was by a large majority opposed to this right being conferred on the tenants. The Hon'ble Mr. Janaki Nath Bose was opposed to it The Hon'ble Member in charge of the Bill was, of course, for it But the Hon'ble Mr. Maddox recommended that the law as laid down in the Bengal Tenancy Act* be followed. I presume the draft Bill, which was submitted to the Government of India, did not contain this new provision added by the Select Committee. In any case, it was not in the Bill as introduced in Council. The Statement of Objects and Reasons distinctly in paragraph 18 lays down, 'As regards raiyats, it is now proposed to decide the question on the basis of custom (clause 246), and thus to follow the provisions of section 183 of the Bengal Tenancy Act.*' It was only subsequent to the introducton of the Bill that the Hon'ble Mr. McPherson in his letter of 30th November, 1911, to the Government, and in his speech which he delivered for submitting the Bill to the Select Committee, raised this question, not on any new facts since discovered by him, but on the old grounds. His grounds, so far as I have gathered, are shortly as follow:—

"*Firstly*, the Crown should in his opinion take powers to permit freedom of transfers of raiyati holdings and to fix a limit to the registration fee payable to the landlord.

"*Secondly*, numerous transfers having taken place as appears from the settlement proceedings, in his opinion this was the most opportune time for laying down a general rule which will decide the question once for all.

"With regard to the right of the Crown to concede this right to the raiyats, all that I have to say is this, that if this concession had been entirely in the gift of the Crown, no one could have objected, although, as appears from his note, that he himself is doubtful if this concession will work to the benefit of the tenants; for in paragraph 16 of his letter he suggests that if this concession does not work well this law might be subsequently repealed and all sales might be altogether prohibited. There are others who are of opinion that this will prove the extinction of the cultivating class. My submission, however, is that you have to consider the vested rights of the landlord. You cannot ignore that right. You do not propose to give anything which is entirely in your gift. You want to deprive the landlord of some privileges and give them to the tenant. Have you a right to do so? In the language of Lord Dufferin you have not.

"As regards the number of sales that are alleged to have taken place as a ground for this extraordinary measure. Granted that it is so. The point is not as to how many sales have taken place, and whether they are numerous or few, but the point is whether the sales have been held without the consent of the landlord and have been held to be valid. If 75 *per cent.* of the holdings have been sold with the consent of the landlords it will not and cannot prove that there is a custom of sale without his consent. It has been held in various cases by the Hon'ble High Court that the essence of such a usage is that transfers made to the knowledge, but without the consent of, the landlord, are valid and must be recognized by him (11 *Calcutta Weekly Notes*, page 83). I have searched in vain amongst the papers sent to us if any such position is maintained in Orissa. There are none.

"My submission is that no case is made out for changing the existing law, and the innovation introduced by the Hon'ble Member in charge of the

i.e., Act VIII of 1885.

Bill after it was introduced into Council should be expunged. I therefore beg to support the motion now before the Council."

The Hon'ble BABU JANAKI NATH BOSE said :—

"Sir, I was opposed to the proposal of making occupancy rights absolutely transferable. I am still opposed to that proposal, but then existing facts must be faced, and the law should be altered in such a way as to fit into the existing state of things. Sir, since the last revisional settlement a very large number of transfers of occupancy-holdings has taken place, and my friend, the Hon'ble Mr. Maddox, will be able to inform the Council as to the exact number of such transfers and the quantity of lands so transferred. This clause 25A leaves the law as it was under the Bengal Tenancy Act,* because, Sir, if in any local area a custom exists for making such transfers valid, the custom will have its way and the Collector will be bound to give effect to the custom. If, on the other hand, no such custom prevails even if the transfer takes place, the mutation will not be allowed. It was observed that zamindars in case of such transfers were levying fees varying from 10 to 15 *per cent.* of the consideration money to 50 *per cent.* and upwards, and in some of the zamindaris it was found that the levying of such fees almost amounted to blackmailing. The object of this clause is to legalize the realization of a reasonable fee by the landlord, and it was considered that 25 *per centum* of the consideration money would be a reasonable amount. On the other hand, the transferor and the transferee were to be given to understand what they were bound to pay under the law to the zamindar for making the transfer valid. This clause was not the result of a sudden idea. The Hon'ble Mover of the amendment will find that so late as 1908-1909 at the conference held by the Hon'ble Mr. Maddox at Cuttack with the representative gentlemen of the town the matter was thoroughly discussed, and most of the zamindars agreed to 25 *per cent.* of the consideration money. I also notice that in the opinions submitted by some of the associations the matter is also discussed. So I do not think that it is right to say that the Select Committee all of a sudden thought of the matter and enacted a clause like this. The Hon'ble Mover of the amendment also says that the burden of proof will lie on the landlord. I think that it is not a right view of the law. It is the transferee who is to apply to the Collector in case of refusal by the landlord, and the Collector will have to be satisfied that the holding was transferable by custom without the consent of the landlord. When such an issue was raised, it was incumbent on the applicant to prove this issue in his favour or, in other words, the onus or burden of proof is on him; and I think that the Hon'ble the Legal Remembrancer will support me in my view of the law, so that, Sir, you will notice that the law is left where it was under the Bengal Tenancy Act* and that the matter will be regulated by the custom prevailing in a certain locality. In order to remove the difficulties which have been met with in Orissa during the last provincial settlement and in order to legalize the realization of certain dues which were being realized by the landlords and also in order to make the matter clear to the transferees that such transfers are not valid without the consent of the landlord unless there be a custom to that effect in that locality, I say, that this clause was enacted after consideration of the above points and after a good deal of deliberation."

The Hon'ble BABU BRAJ KISHOR PRASAD said :—

"Sir, I rise to raise my voice against this amendment which has been proposed by the Hon'ble Rai Sheo Shankar Sahay Bahadur. So far I think that the provision embodied in clause 25A is one of the many wholesome principles which have been introduced in the Orissa Tenancy Bill, and the tenantry of Bihar look forward to the day when some such provision will be introduced sooner or later into the Bihar Tenancy Act. I can speak from my personal experience and tell this house, that the present state of law as it stands makes the position of the tenant very very deplorable, because all of us who have to work in the mufassal know that the rulings of the Calcutta

* *i.e.*, Act VIII of 1885.

gh Court have made it impossible to prove custom. Whenever any
, in which there is a transfer even by mortgage, comes to the Civil Court,
result is that the poor tenant or the transferee is dispossessed of the holding,
the general result is that the tenants are impoverished. Of course, I
ave, Sir, that according to the Indian Evidence Act * or according to any
as it stands, the onus is upon the transferee to prove the existence of
custom, and that is the very thing which ought to be removed. As this
vision embodies that amendment, I beg to support the clause as it stands.
would like to see the onus thrown upon the landlord to prove the existence
my custom which would entitle him not to recognize the transfer. With
se few words I beg to support the clause as it stands and to oppose the
endment proposed."

e Hon'ble RAI SITA NATH RAY BAHADUR said:—

"Sir, I wish to speak a few words in support of the amendment that
se 25 A be omitted. My reasons are these:—I know that the practice
grown up everywhere in Bengal and Orissa to recognize the transferability
occupancy right where such transfer is recognized by custom or usage,
the zamindars give effect to such transfers by accepting a fee of 25
cent. of the consideration money But the first thing I learn from
remarks made by the Hon'ble Babu Janaki Nath Bose is that in Bengal the
ctice prevails that the zamindars are bound to recognize the transferability
portion of an occupancy holding. But I think nowhere the practice prevails
ompelling the zamindars to recognize the transferability of a portion of
olding. It is, therefore, an innovation, and as such would lead to com-
ations and unpleasantness in the relations between the raiyat and the
indar. It is also an innovation which is detrimental to the interests of
zamindar, in that a portion of the occupancy-right should be allowed to
transferred and the zamindar should be bound to recognize the trans-
bility of a portion of a holding."

Hon'ble MR. MADDOX said:—

"Sir, as the Hon'ble Rai Sheo Shankar Sahay Bahadur has referred to my
nion, I should like to say a few words. I regret that I cannot give the
res as the Hon'ble Babu Janaki Nath Bose asked me to do, but no doubt the
'ble Mr. McPherson will supply them. I have studied these figures and
n state how numerous the transfers are and how very universal the practice
n the three districts of Orissa. I may say that when I left Orissa in 1899
as opposed to this provision and even after 5½ years I should oppose this
vision, but since then I have examined a mass of evidence collected, and I
satisfied that such a provision is necessary. The Hon'ble Rai Sheo
nkar Sahay Bahadur referred to the proceedings which led to the passing
he Bengal Tenancy Act† in the Supreme Council. I would ask him again
look at the words of the Lieutenant Governor of that time. His Honour
d that compulsory provision of this kind did not come within the scope of
'present' legislation (present is the word used by His Honour). I do not
gine from that that a legislation on this subject could be considered to be
luded in the future. My opinion now is that the Orissa raiyat, having
this, thinks that he is fit to enjoy this provision, and this is a provision
ch is of advantage both to the landlords as well as to the tenants and which
ld settle innumerable disputes. I therefore oppose the amendment."

Hon'ble MR. MCPHERSON said:—

"Before the Council votes on this amendment I should like to refresh the
ds of Hon'ble Members regarding the salient facts of the case. Revision
rations have been going on for the last five years throughout the temporarily-
led estates of Orissa, and careful statistics have been kept by the officers
the Settlement Department regarding the extent to which transfers of
upancy rights have occurred. These statistics show that during the

* i.e. Act I of 1872.
† i.e., Act VIII of 1885.

past 10 or 12 years no less than 140,000 acres of raiyati lands have changed hands for an aggregate consideration of 77 lakhs of rupees. On this an additional one-fourth, equal to nearly 20 lakhs, was paid by the transferees to the landlord as the price of the recognition of the transfers at the time when they were entered in the landlords' books. I may add that a considerable number of these transfers were brought to the notice of the landlord in the course of the present much-abused revision settlement, and it was the confidence inspired by the presence of the attestation officer that led the parties to deal with one another and arrange for the recognition of numerous transfers that had up to that date not been brought to the notice of the landlord and received his recognition. When the landlords found that the revision operations were bringing this benefit in their train, they ceased to be hostile to the operations, and in fact welcomed them. It was at the time of recording these changes that the Settlement Officer found that the payment of one-fourth of the consideration money was practically the universal practice. Cases did come to his notice in which exacting landlords had demanded higher fees and refused to recognize a practice which had become the general usage, but those who asked for more than 25 *per cent* were ashamed to own it when confronted by the Settlement Officer. Although it is a heavy fee, the raiyat is willing to pay it rather than lose the valued right of transfer. I have questioned influential landlords on the subject, and they all admit that one-fourth is the proper fee, and this is what we propose in section 25 to recognize as the usage in the areas where the custom of transfer has been found to exist. We have enumerated in *Explanation* (2) the nature of the objections which may be considered to be reasonable. It cannot be said that we are introducing something that is absolutely new, without any consideration and respect for the landlord's wishes. The whole point of section 25 A is that we are not introducing anything new or changing the provisions of the Bengal Tenancy Act.* The Bengal Tenancy Act* says that transfers shall be regulated by local custom or usage. We have found in the temporarily-settled estates of Orissa that a certain usage does exist, and we have incorporated this in clause 25 chiefly with the object of preventing the exaction of a larger fee than is recognized as fair by all zamindars in Orissa to whom I have spoken on the subject.

The statistics collected by the Settlement Department show that about three-fourths of the transfers have occurred amongst the raiyats themselves while one-fourth has been in favour of landlords and one-fourth in favour of *mahajans*.

"The safeguards provided in the Bill will tend to diminish the amount of transfer which occurs in favour of the last-named class.

"We have not at present any reason to fear that recognition of transfer will encourage improvidence amongst the cultivators. Cultivators are liable to be met by sudden calamities, as for example, the loss of plough cattle by disease. By the sale of half an acre a cultivator can meet such a calamity and, as soon as a good harvest comes, he re-purchases his half acre or buys somebody else's. Or if the calamity be overwhelming, he perhaps sells out altogether, sets off for Calcutta or elsewhere, takes up service, amasses a little money, and then, having made his little pile, returns to his native village and settles down again as a cultivator. I think that we ought not to place any obstacles in the way of this process which is so beneficial to the raiyat and is not injurious in any way to the interests of the landlord.

"A good deal has been said about the reference to a portion of a holding in clause 25 A. Now I want to explain to the Council that more than two-thirds of these transactions, extending over 12 years, and covering 140,000 acres, were sales of part holdings, and no distinction is made by landlords in actual practice in dealing with these part transfers. We have proposed to make no distinction in the Act, except that we have introduced certain safeguards against excessive subdivision. It would be a great mistake in the circumstances of Orissa not to allow the transferee and transferor to become separate in responsibility, once the transfer has been recognized. This is the universal practice, and I have never heard of any landlord who took

* i.e., Act VIII of 1885.

his 25 *per cent.* and refused to allow the distribution of rent consequent on the transfer.

"We do not propose to extend the provisions of section 25 A to the permanently-settled estates, because we have not sufficient information regarding the usage of transfer in these areas. We justify clause 25 A entirely on information which we have collected in the course of the revision settlement operations in Orissa. We cannot assign any similar or sufficient reason for extending the provisions to the permanently-settled area, and I have therefore in the separate amendment which stands in my name proposed that the section shall not extend to the permanently-settled areas.

We have been told that the right of transfer did not exist in the year 1789. But that was about 120 years ago, and we are not legislating now for 1789. We are legislating for the present day and for the future. We have also been told what was the position of the case at the time that the Bengal Tenancy Act was under discussion, that is 30, years ago. We do know that at the time the Bengal Tenancy Act was under discussion there was a very strong volume of opinion in favour of making all occupancy holdings transferable, and we also know from the correspondence and the discussions that took place then that the reason why no such provision was made in the Bengal Tenancy Act was that there was lack of uniformity in the practice of transfer throughout the Province. There was a great deal of diversity of opinion as regards the conditions under which the practice should be recognized. It was impossible to lay down any rule based on uniform or universal usage, and therefore the question was held over. I have read the correspondence and I remember seeing a definite statement made by a previous Lieutenant Governor of Bengal that if the practice of transfer had become uniform he would have no hesitation in recommending to the Government of India, and passing a legislative enactment which would give a right of transfer in accordance with the practice that had become uniform. That is precisely what we want to do in the case of Orissa.

Attention has also been drawn by the Hon'ble Member to the fact that there is no such provision in the Chota Nagpur Tenancy Act, but there again the situation is absolutely different. We know that in Chota Nagpur, as in the Sonthal Parganas, the great bulk of the cultivators are aborigines or semi-aborigines, who cannot be trusted to exercise the right of transfer without coming to grief, but there is no reason to believe that the exercise of this right which is now being exercised as a matter of fact daily in Orissa, will cause disaster to the people of Orissa. The two cases do not stand on the same footing. Attention has been drawn to a remark made by me that if ever the recognition of transfer proved disastrous in Orissa the time would then have come to intertere—either to repeal the section or to limit the right of transfer. I do not think that is an adequate argument against our recognizing the existing usage in the present Bill. It might possibly happen, though I think it is highly improbable, that in the course of 30 years we shall find lands drifting into the hands of money-lenders and the situation might become such that it would become necessary to re-consider the whole matter. There is no reason why we should not act in the light of the information that we now possess, and acknowledge a usage which has become universal and which in the opinion of all those who are acquainted with the facts acknowledge should be incorporated in the law."

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR said:—

Sir, I beg to make a few observations with regard to the provision in clause 25 A. This provision seeks to give transferabilities to all occupancy-holders In the Bengal Tenancy Act the matter, that is, the incidence of transferabilities, depends upon the question of custom or usage. It is no doubt from one point of view very desirable that occupancy-holdings should be made transferable. Considerable difficulty is felt by the agriculturists when their hands are handicapped and they cannot mortgage and sell their holdings in times of need. At the same time, to protect the interests of the landlords, the existing Tenancy Act has made the question dependent upon the existence or otherwise of custom or usage. In Bengal, when there is a transfer, the

landlords sue the transferee for ejectment, treating him as a trespasser. So far as my experience goes in the generality of cases they are settled, and the landlord becomes content with receiving 25 *per cent.* of the consideration money and a little increase in rent also. In Bengal, however, the Tenancy Act does not contemplate the transfer of a portion of an occupancy-holding. This is an innovation. In the Bill, not only is the transferability sought to be given to the sale of one integral portion of the occupancy-holding, but it also tries to give that incidence to a portion of an occupancy-holding. The Bill is defective in one respect. One-sixth of an occupancy-holding would be a portion of a holding, and if a holding consists of 20 bighas of land, 3 bighas of land might be sold. In practice I have noticed in hundreds of cases that a tenant who has a holding, say of 12 bighas of land, sells 2 bighas in one case, sells 2 bighas in another case: he sells 5 bighas to a person, fixing an imaginary rent for the same generally proportionate to the rent payable for the entire holding. When such a case comes before the landlord in Bengal, even if he be so disposed as to recognize the transfer, there arises the difficulty as to whether the rent which has been fixed as among themselves by the vendor or vendee is adequate for the land that is sold. A holding consisting of 12 bighas of land contains first class, second class, third class and fourth class lands, and the zamindar does not know what to do; he has to make an inquiry for himself in the presence of the vendor and the vendee and then come to terms. Now, as the Bill now stands, an occupancy-holder might sell one-fourth, one-third, one-sixth or one-eighth of a holding, or he might sell a few bighas of land forming, as it were, component parts of the entire holding, and this would give rise to the difficulty. No doubt the Government intends to make by this provision a certain provision regarding the transferability: well and good. But let it be confined for the present to the entire holding. Any attempt to legalize transfer of a portion of a holding would give rise to difficulties and complications which would give rise to litigation, and I submit that ought to be avoided. I do not wish to take up the time of the Council with further observations than I have put forward, and I would ask the Hon'ble Member, and in fact the Council, to consider this aspect?"

The Hon'ble MR. KERR said:—

"Sir, after the very interesting speech of the Hon'ble Rai Baikuntha Nath Sen Bahadur, I ought to explain to the Council what the provisions are with regard to the transfer of occupancy holdings. I understand the Hon'ble Member would have no objection to these provisions provided they were confined to complete holdings. His objection is that the time is premature to put them in force with regard to part holdings. With regard to the practical aspect of the case, transfers of part holdings do take place in Orissa, and it is especially for those that we want to provide. But the Hon'ble Member will see that in *Explanation II* (*iii*), one of the points to which the Collector shall have regard in considering whether he should give his consent to the transfer—whether he should make the landlord give his consent to the transfer—is whether the transfer results in the creation of unreasonably small holdings; and then, again, in clause 91 it is laid down that the division of a tenure or holding or distribution of the rent payable in respect thereof shall not be binding on the landlord unless it is made with his express consent in writing or with that of his agent duly authorized in that behalf. I submit, Sir, therefore, that we have made ample provision for the protection of transfer of part holdings from abuse, and that the Council need have no hesitation in passing this clause 25A on account of any apprehension that it might go too far as regards part holdings.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"Your Honour, I raised two or three points in connection with clause 25A. My Hon'ble friend, Babu Janaki Nath Bose, seems to think that clause 25A as it stands at present—of course I do not refer to the re-drafted clause 25A—will throw the onus of proving custom upon the tenant or upon the transferee. He

wanted to refer this matter to the Legal Remembrancer, but I submit, Sir, that no reference is necessary. If the Members of the Council were to read two or three lines, they would be fully convinced that the sentence as it stands at present in sub clause (*3*) throws the onus upon the landlord. It is not the tranferee who is to prove the validity of his transfer; it is the landlord who is required to prove such custom by which he can refuse to recognize the transfer. In sub clause (*3*) the sentence runs thus:—"The Collector, after giving notice to the landlord to appear and be heard, shall thereupon inquire and decide whether the landlord is entitled by custom, or for any other good and sufficient reason, to refuse his consent to a transfer." Now there cannot be any room for doubt that the sentence as it reads in this sub-clause throws the onus upon the landlord and not upon the tenant. Now, no doubt, as I have submitted before, that in the re-drafted clause 25 A this matter has been left in the dark, and that would be a bone of contention hereafter, whether the onus is, in the peculiar circumstances of the case, upon the tenant or upon the landlord But we are now considering clause 25 A as it stands in the Bill; we are not considering the re-drafted clause 25 A; and therefore I think my learned friend's argument is that the sentence as it stands throws the onus upon the tenant or upon the transferee is not correct or sound."

The Hon'ble MR. MCPHERSON said:—

"May I suggest that it would be preferable if we considered the present re-draft rather than the clause as it came from Select Committee?"

The Hon'ble MAULVI SAIYID FAKHR-UD-DIN said:—

"After this clause is considered."

The PRESIDENT said:—

"Of course, that has not been moved yet."

The Hon'ble MR. CHAPMAN said:—

"The re-draft is perfectly clear; the original clause is obscure."

The PRESIDENT said:—

"I do not think the Hon'ble Member need waste time over the original clause because the amended clause is going to be proposed."

The Hon'ble MAULVI SAIYID FAKHR-UD-DIN said:—

"Now with regard to the re-drafted clause 25 A, of course I submitted before there is no safeguarding against the transfer of portions of the holding. I have heard just now from the Hon'ble Mr. Maddox and the Hon'ble Mr. McPherson that in the majority of cases in Orissa portions of holdings have been transferred, and that therefore there is presumption of usage. I submit that the Hon'ble Gentlemen have failed to consider the underlying principle of custom or usage, the transfers which take place without the landlords' consent, but with their knowledge and without any successful opposition on behalf of the landlords will go to establish usage or custom. If in Orissa portions of holdings have been transferred with the knowledge and consent of the landlords, they would not raise presumption of any usage. If the landlord has recognized such transfers on taking any *salami*, say 25 *per cent.*, on the consideration money or something so, that recognition would not establish usage or custom. Again custom requires the establishment of transfers from time immemorial. I submit, Sir, that the clause 25 A as it stands will be most injurious, and I further submit, Sir, that even the re drafted clause 25 A does not meet all the objections and that even should not be adopted."

The motion was then put and lost.

The following motions were, by leave of the President, withdrawn:—

78. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that clause 25 A be omitted.

79. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that clause 25 A be omitted.

80. If motion No. 78 be not carried, the Hon'ble Rai Sheb Shankar Sahay Bahadur to move that for clause 25 A the following be substituted, namely:—

25A. (1) Every transfer by sale, gift or exchange of any occupancy-holding or a portion of a holding shall be invalid unless made with the consent of the landlord, or unless where there is a custom, usage or customary right of such transfer, without the consent of the landlord on payment of a fee being made to him.

"Transfer of occupancy-holding by sale, gift or exchange.

(2) When any occupancy-holding or portion of a holding is so transferred with or without the consent of the landlord, as aforesaid, the landlord, on registration of the transfer in his office, shall be entitled to levy a maximum registration fee as follows, namely:—

(a) In the case of a sale, a sum equal to 25 *per cent.* of the market value, or to six times the annual rent of the holding or portion thereof, whichever is greater:

Provided that,

(i) until sufficient reason to the contrary is shown, the market value shall be deemed to be the consideration money as shown in the deed or document effecting the transfer, or, where there is no such deed or document, the consideration money actually paid for the transfer; and

(ii) in case the rent is paid in kind and is fluctuating, the average yield to the landlord during five agricultural years preceding the sale shall, for the purposes of this section, be taken as the annual rental of the holding or portion thereof.

(b) In the case of gift or exchange, a sum equal to six times the annual rental of the holding or portion thereof:

Provided that, in case the rent is paid in kind and is fluctuating, the average yield to the landlord during five agricultural years preceding the sale shall, for the purposes of this section, be taken as the annual rental of the holding or portion thereof.

(3) If, in any case, the landlord accepts the fee authorized by sub-section (2), his consent to the transfer shall be deemed to have been given.

(4) If, in any case, a dispute arises between the transferee and the landlord, either with regard to the validity of the transfer or with regard to the fee payable for such transfer, the landlord or the transferee shall apply to the Collector who shall inquire into and decide the same.

(5) Nothing in this section shall affect the right of either party to bring a suit in the civil court to contest the correctness of the finding of the Collector with regard to the validity or otherwise of the transfer, and, subject as above and to any appeal or revision as provided for in this Act, the order of the Collector under this section shall be final.

(6) If, notwithstanding the order of the Collector to the contrary, the landlord refuses to accept the requisite fee, the transferee may deposit such fee with the Collector, who shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered

(*1*) Nothing in this section shall be construed to authorize a division of a tenure or distribution of the rent payable in respect thereof unless it is made with the express consent in writing of the landlord or his agent duly authorized in this behalf.

The following motions were, by leave of the President, withdrawn:—

81. The Hon'ble Babu Hrishikesh Laha to move that the words "with the consent of the landlord or according to custom" be inserted after the word "exchange" in line 2 of clause 25 A (*1*).

82. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "or portion of a holding" in lines 1 and 2 of clause 25 A (*1*) be omitted.

83. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or portion of a holding" in lines 1 and 2 of clause 25 A (*1*) be omitted.

84. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "within six months from the date of transfer" be inserted before the words "to the landlord" in line 3 of clause 25 A (*1*).

He said:—

"There is no provision in clause 25 A to expedite the transfers, and it is necessary that the transfer should be registered in the presence of the landlord as soon as possible. and I think that is the intention of the Hon'ble Member in charge. So I propose that these words be added.

The Hon'ble MR. H. MCPHERSON said:—

"Sir, I oppose this amendment because I do not think it would do any good. I am just as anxious as the Hon'ble Mover that these transfers should be recorded as soon as possible. But would the mere putting in of the words "within six months from the date of transfer" effect this object? Their effect would rather be to deter people who have not come forward within six months from coming forward later. We are dealing with ignorant raiyats who do not know the law very well, and if the transfer does come to notice more than six months after the transaction, why should we prevent the transferee from paying the fee to the landlord and getting the transfer formally recognized. I do not think that this amendment would do any practical good. I therefore oppose it."

The motion was then, by leave of the President, withdrawn.

The following motions were, by leave of the President, withdrawn:—

85. If motion No. 83 be carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or portion" in line 4 and the words "or portion thereof" in lines 9 and 10, 12 and 13 in clause 25 A (*1*) be omitted.

86. The Hon'ble Babu Hrishikesh Laha to move that the words "market value" be substituted for the words "consideration money" in line 2 of clause 25 A (*1*) (*a*).

87. The Hon'ble Mr. M. S. Das moved that the following be substituted for clause 25 A (*3*), namely:—

(*3*) "If the landlord demands a higher fee than that prescribed in clauses (*1*) (*a*) and (*1*) (*b*) of this section, the transferee or his successor in interest may apply to the Collector. The Collector, after notice to the landlord, shall (?) make a summary inquiry. If the Collector is satisfied that the complaint is true, he shall inflict a fine on the landlord not exceeding twice the excess fee demanded. If the Collector finds that the complaint is false, he shall direct the applicant to pay all legitimate costs incurred by the landlord during the summary inquiry."

He said:—

"Sir, first of all I shall ask the permission of the Hon'ble Member in charge of the Bill to be a little indulgent to me and allow me to make a slight alteration in the amendment so as to include also sub-clauses (4) and (5). It was, as it seems, rather an oversight on my part or the typewriter's mistake.".

The Hon'ble MR. H. MCPHERSON said:—

"Sub-clauses (4) and (5) are proposed to be cut out altogether."

The Hon'ble MR. DAS said:—

"Sir, I have very carefully and with much interest listened to the many speeches which have been made regarding the condition of the raiyat and what can be done to help him. Unfortunately the raiyat is not here—the raiyat is not to be found anywhere in this hall, and all of us say that we are his representatives. One sees an agent of the Gorakshini Sabha with a picture of the cow going about collecting funds to save cattle from slaughter; you see also the cow in a picture of Bovril; so everybody thinks he can represent the raiyat. I do not say that I am a representative of the raiyat. I wish I were. I should certainly feel a greater pride in occupying this seat here, and I do not mind standing at the farthest point of this hall so long as I can say fitly that I represent the poor raiyat. Sir, I have mixed with him; I have made my feeble attempts, unsuccessfully, I must say, to improve his condition. At any rate, here we have found the Hon'ble Mr. Maddox was not his friend, but he has changed since. The Hon'ble Babu Janaki Nath Bose was not his friend, but he has changed since. The Hon'ble Mr. McPherson has been his friend within the last five years. When the Committee met at Cuttack, at which the Hon'ble Mr. Maddox presided, I was his friend and I continue to be his friend—at least I am an older friend than any of these gentlemen. Then the question that has been put before us is the transferability. I have read that word and, when I go through the cumbrous provisions, the different stages at which the landlord might oppose him, I ask, where does all this ability go? It adds to the ability of opposition, not to the ability of transfer. The most unfortunate circumstance in connection with this question is that it is not possible for us to place ourselves in the poor raiyat's position when he is on the verge of starvation and wants to sell a plot of his holding. Perhaps the floods have come, starvation stares him and his family, his house has been washed away, and then he wants to sell a portion of his holding in order to leave his family there in his village and to go to some place to work as a coolie and wants his railway fare; that is the time he wants to sell his holding. The question is, none of us can place ourselves in that position and realize the pinch of necessity as it pinches him at that particular time. Sir, everyone—many at least—can play the Hamlet's ghost on the stage, but does anybody realize the feelings of Hamlet's ghost? It is necessary for one to die like Hamlet, be buried, and then come out of his grave and then he would know what the feelings of Hamlet's ghost were. So it is not possible for us to realize the raiyat's position. All that I can say, Sir, apart from wit, but if it were possible for me to picture in graphic language the condition of the raiyat in the circumstances to which I have referred, and if I could hold up before the minds of the Hon'ble Members here the picture, I should say, there, there is the man! He wants to sell his land; he wants to go away at once; and then, I should ask you, are you improving his position by putting all these clauses here, which enable the zamindar to say he is a bad man; that man has got a bad character,—all these sort of objections. What does that mean? These are the zamindar's lookout. The transferee buys, and the zamindar bargains with him; if the zamindar bargains for a thief, let him have a thief, but let the poor raiyat who wants to have a little cash have facilities. This is putting stumbling blocks in his way.

"Now the Hon'ble Mr. McPherson says—I have taken down his words—that we do not want to increase litigation by suggesting means of litigation. What becomes of the state of things when you put in all these—in every

instance the zamindar can oppose. Now the thing is this: the zamindar no doubt has a right to the land, but we must take the raiyat's share in it; he brought the land to a better condition, and we all know the old couplet:—

When Adam delved and Eve span,
Where was then the gentleman?

The man brought the land under cultivation, who worked on the land which was lying waste at the last settlement—it is the raiyat who has brought it under cultivation. The Government reaps the benefit of the cultivation; the zamindar reaps the benefit of the cultivation."

The Hon'ble Mr. MADDOX said:—

"I rise to a point of order. It is not the landlord's description we are discussing, but the demand by a landlord for higher fees. Have the Hon'ble Mr. Das's remarks anything to do with item No. 87 or the demand of the landlord for higher fees?"

The Hon'ble Mr. DAS said:—

"All that I mean by bringing forward these explanations is to consider whether the landlord has got a sufficient case in refusing his consent to the transfer."

The Hon'ble Mr McPHERSON said:—

"I think, Sir, that the Hon'ble Mr. Das is in order. What he suggests is that this amendment of his should be substituted for the whole of sub-clause (*3*), including the *Explanations*. He can, therefore, discuss the *Explanation*."

The PRESIDENT said:—

"Your amendment is to replace the whole of No. 73?"

The Hon'ble Mr. DAS said:—"Yes."

The PRESIDENT said:—

"Then he is in order in discussing the various grounds on which he wishes to have it removed. You are quite in order, Mr. Das."

The Hon'ble Mr. DAS said:—

"All these grounds must be removed if you want to give him facility. I do not want to disturb the right of the zamindar. It is settled that he should have 25 *per cent.* of the consideration money. The remedy is not sought for all cases. The Hon'ble Mr. McPherson says this, that in most cases the zamindar receives 25 *per cent.*, and it is only a few grabbing zamindars whose cases require special legislation. Very good. Then who ought to be punished? These grabbing men ought to be punished. The majority of zamindars are good; they allow the transfers. I am talking only of Orissa. I have no right to talk of Bihar or Bengal; and the majority of zamindars are willing; they allow the raiyat to transfer. Very good. Then there are a few, and what is the evil? These few want more than 25 *per cent.* Very good. I say, if they want more than 25 *per cent.*, punish those unscrupulous zamindars. As soon as a zamindar demands more, the raiyat goes to the Collector and says—well the law authorizes 25 *per cent.* and this man wants from me 50 *per cent.*; and the Collector inquires and says—you wanted 25 rupees more, you will have to pay a fine of 50 rupees. This he decides in a summary way.

"The zamindar, if he is a good man, will take 25 *per cent.*; if he is a bad man, he will want more than 25 *per cent.*, and the transferee by some means will have to make it up with the zamindar. Now, the zamindar knows that

he has got all this armour and he can object on such and such grounds; so he says to the transferee, "You go to the Collector; I will go to the Civil Court; I will take the matter to the highest Court and you calculate the cost of the litigation with me. Instead of that, you pay half of that amount to me." That is what will be done under the provisions of the Bill. Under my proposal all that will be removed."

The Hon'ble SIR BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR OF BURDWAN said:—

"I am sorry I have to oppose this amendment on the ground that, if we look at clause 25 A (*s*) we find that this has been put in to safeguard certain customs that may exist, and the point that the Hon'ble Mr. Das has in view is that, if there be such landlords in Orissa—he does not speak very highly of Orissa—they will oppress the raiyats, but the safeguard is that he may appear and be heard, etc., and the Collector may 'for any good and sufficient reason refuse his consent to the transfer.'"

"Supposing the reason that the Hon'ble Mr. Das has in view is not a good and sufficient reason, the Collector will certainly reject the landlord's proposition. I do not see, therefore, why the Hon'ble Mr. Das in this amendment should have brought in all sorts of things, including 'Hamlet's ghost.'"

The Hon'ble MR. H. MCPHERSON said:—

"I admit that in this matter I have a certain amount of sneaking sympathy with the Hon'ble Mr. Das. What he apparently wants to put into the Bill is that all occupancy rights are transferable, that zamindars are entitled to be paid a fee of 25 *per cent.*, and that if they ask for more than 25 *per cent.*, the raiyat may go to the Collector and get a penalty out of his landlord equal to double the amount of the excess demand. That may be a very desirable position, but what we have to consider is the question of practical politics. Even with all these safeguards that we have included in our clause 25 A—safeguards in the interests of the zamindars—there has been a considerable amount of opposition to our proposals. If we had put forward propositions such as Mr. Das has suggested, we should have had all the zamindars of Bengal, Bihar and Orissa on the top of us, and there would have been no chance whatever of carrying our proposals. I do not see that his proposal is a practical one in the present state of affairs, and I do not see how we can possibly accept his amendment at this stage of the discussion. Mr. Das, I may remark, himself threw out as a general accusation against the Bill that we had ransacked all the law of India to find repressive legislation to utilize against the peaceful Uriyas. This little addition to the penal clauses of the Bill now proposed by him does not seem to accord with his accusation or with his general attitude towards the Bill. I must oppose this amendment."

The Hon'ble MR. DAS said:—

"I do not look upon it as a penal clause. I made a remark to that effect, but what I really meant, as I shall perhaps shew hereafter, is that the Bill gives us perhaps the character of being the most turbulent people under Your Honour's Government. I do not like to say a word about the zamindars of Bihar or Bengal. I do not know them, and perhaps there are many very kind or very good landlords amongst them; at any rate, most of our zamindars are good enough, and what I say is, do not throw the apple of discord amongst them. If they can settle it between themselves let them do so. If a raiyat dances attendance on a zamindar and works a little for him, he may thereby get his fee or a portion of his fee taken off. But if he goes to Court he finds a formidable enemy, and I would rather have 'the song of the dying swan' from the raiyat.

"If the Hon'ble Mr. McPherson has sympathy with my views, I expect him to have the courage of a Scotchman."

A division was then taken, with the following result:—

Ayes—4.

The Hon'ble Babu Bhupendra Nath Basu.
Raja Rajendra Narayan, Bhanja Deo.
Mr. Das.
Babu Braj Kishor Prasad.

Noes—36.

The Hon'ble Mr Slacke.
" Raja Kisori Lal Goswami.
" Mr. Greer.
" Mr D. G. Macpherson.
" Mr. Coilin.
" Mr. Stevenson-Moore.
" Mr. Chapman.
" Mr. Finnimore.
" Mr. Kerr
" Mr. Stephenson.
" Mr. Maddox.
" Mr. Küchler.
" Mr. Morshead.
" Sir Frederick Loch Halliday, Kt.
" Mr. Cumming.
" Mr. Bompas.
" Mr. Oldham.
" Mr H McPherson.
" Babu Janaki Nath Bose.
" Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.
" Sir Frederick George Dumayne, Kt
" Rai Sita Nath Ray Bahadur.
" Lt. Col. G. Grant-Gordon.
" Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan.
" Babu Kritanand Sinha.
" Mr. Apcar.
" Mr. Stewart.
" Mr. Golam Hossain Cassim Ariff.
" Mr. Saiyid Wasi Ahmad.
" Maulvi Saiyid Muhammad Fakhruddin
" Babu Hrishikesh Laha.
" Maulvi Saiyid Zahiruddin.
" Mr. Reid.
" Rai Sheo Shankar Sahay Bahadur.
" Rai Baikuntha Nath Sen Bahadur.
" Khan Bahadur Maulvi Sarfaraz Husain Khan.

The following members were absent:—

The Hon'ble Mr. Mitra.
" Kumar Sheo Nandan Prasad Singh.
" Maharaja Manindra Chandra Nandi.
" Maharaj-Kumar Gopal Saran Narayan Singh.
" Babu Deba Prasad Sarbadhikari.
" Mr. Norman McLeod.

The Hon'ble Dr. Abdullah-al-Mamun Suhrawardy.
" Mr. Dutt.
" Babu Mahendra Nath Ray.
" Mr. Dip Narayan Singh.
" Babu Bal Krishna Sahay.

The result of the division was ayes 4, noes 36, and the motion was therefore lost.

The following motions were, by leave of the President, withdrawn :—

88. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "whether the holding or portion thereof is transferable by custom without the consent of the landlord or whether the landlord has" be substituted for the words "whether the landlord is entitled by custom or for" in line 6 of clause 25A (*3*).

(*The Hon'ble Member, however, stipulates that if his motions Nos. 83 and 88 be carried, the words "or portion thereof" in the above amendment should be omitted.*)

89. The Hon'ble Babu Hrishikesh Laha to move the following amendments to clause 25A (*3*)—

(*i*) the words "transferee or his successor" be substituted for the word "landlord" in line 6;

(*ii*) the words "or for any other good and sufficient reason" in lines 6 and 7 be omitted; and

(*iii*) the words "to obtain a registration of the transfer of the holding or a portion thereof" be substituted for the words "to refuse his consent to the transfer" in line 7.

The whole sentence, therefore, to read as follows:—

"The Collector, after giving notice to the landlord to appear and be heard, shall thereupon inquire and decide whether the transferee or his successor in interest is entitled by custom to obtain a registration of the transfer of the holding or a portion thereof, and if the Collector finds that the holding is so transferable, etc."

90. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "and any arrears due for the holding" be inserted after the words "cause the said fee" in line 10 of clause 25A (*3*).

91. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the following proviso be added at the end of clause 25 A (*3*), namely :—

"Provided that no such application shall be admitted by the Collector if it is made after six months from the date of the landlord's refusal."

92. If motion No. 89 be carried, the Hon'ble Babu Hrishikesh Laha to move that Explanation I to clause 25A (*3*) be omitted.

93. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that Explanation I to clause 25A (*3*) be omitted.

94. If motions Nos. 79 and 93 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "that the holding is transferable by custom" be substituted for the words "that he is entitled by custom to refuse his consent to the recognition of transfers in individual cases" in lines 3 to 5 of Explanation I to clause 25A (*3*).

95. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the following be substituted for Explanation II to clause 25A (3), namely:—

"*Explanation II.*—The following shall be considered good and sufficient reasons for the landlord's refusal to give consent—

"(*i*) that the transferee is a non-agriculturist or a professional money-lender;

"(*ii*) that the transferee does not reside within, or in the vicinity of, the village in which the holding is situated;

"(*iii*) that the transfer does not result in the creation of unreasonably small holdings; and

"(*iv*) that the transferee is a habitual defaulter of rent or a person who, for any other reasonable cause, should not be made a tenant of the landlord without his consent."

96. If motion No. 83 be carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that Explanation II (*iii*) be omitted.

97. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "is in respect of a portion of a holding" be substituted for the words "results in the creation of unreasonably small holdings" in Explanation II (*iii*) to clause 25A (3).

98. The Hon'ble Babu Hrishikesh Laha to move that the words "provided that the Court shall presume such finding to be correct until the contrary is proved" in lines 3 and 4 of clause 25A (5) be omitted.

99. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "provided that the Court shall presume such finding to be correct until the contrary is proved" in lines 3 and 4 of clause 25A (5) be omitted.

100. If motion No. 79 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "provided that the Court shall presume such finding to be correct until the contrary is proved" in lines 3 and 4 of clause 25A (5) be omitted.

101. The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, to move that for sub-clause (5) of clause 25A the following be substituted, *viz*:—

"(5) Nothing in this section shall affect the right of any party to institute a Civil suit on any matter decided by the Collector under this section."

7 A. The Hon'ble Mr. McPherson, with the permission of the President, moved that for sub-clause (3) and Explanation I thereto of clause 25 A the following be substituted, namely:—

"(3) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his successor-in-interest may deposit such fee with the Collector, and, at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the holding is transferable by custom without the consent of the landlord and whether the landlord has any good and sufficient reason to refuse his consent to the transfer; and if the Collector finds that the holding is so transferable, and that the landlord has no good and sufficient reason to refuse his consent to the transfer, he shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

Explanation I.—The fact that the landlord is in the habit of charging fees on the registration of transfers of holdings shall not by itself be taken as proof that the holding is not transferable by custom without the consent of the landlord."

The motion was put and agreed to.

8 A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that sub-clauses (*4*) and (*5*) of clause 25 A be omitted.

The motion was put and agreed to.

9 A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the following sub clause, to be numbered (*4*), be added at the end of clause 25 A, as amended in Council, namely:—

"(*4*) Nothing in this section shall apply to the transfer of an occupancy-holding in a permanently-settled estate."

The motion was put and agreed to.

Clause 246.

15 A. The Hon'ble Mr. H. McPherson, with the permission of the President, moved that the following new illustration be added after illustration 1*a*) to clause 246, namely:—

"(1*aa*) A usage under which a raiyat in a permanently settled estate is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act."

He said:—

"This is a consequential amendment to No. 9 A. The illustration, as it stands in the Bengal Tenancy Act,* was included in the original draft of the Bill. It was removed from the Bill when it was proposed to make clause 25 A generally applicable. Now that clause 25 A has been made inapplicable to permanently-settled estates it is necessary to restore the illustration, so far as permanently-settled estates are concerned."

The motion was put and agreed to.

The following motions were, by leave of the President, withdrawn:—

Clause 50.

128. The Hon'ble Mr. M. S. Das to move that the word "raiyat" be inserted after the word "*bajiaftidar*" in lines 1 and 4 in the proviso to clause 50.

Clause 52.

129. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "in a permanently-settled area" in lines 1 and 2 of clause 52 (*1*) be omitted.

130. If motion No. 129 be carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "situated in a permanently-settled area" in lines 3 and 4 of clause 52 (2) be omitted.

* i.e., Act VIII of 1885.

Clause 54A.

131. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that clause 54A be omitted.

He said:—

"This is a new measure and has been taken from the Chota Nagpur Tenancy Act * It encroaches upon the existing rights of the landlords. Clause 148 in Chapter XII, which is practically the same provision as this, limits its application to temporarily-settled areas, and this one—54A—will practically be introduced for permanently-settled areas. I have got another amendment on permanently-settled areas, so I need not say anything about that. It is intended to apply to permanently-settled area, where Chapter XII is not introduced. I think this restriction should not apply not only to permanently-settled area but also to temporarily-settled area. I beg to move that this clause be deleted."

The Hon'ble Mr. Das said:—

"I have the same amendment and if Your Honour permits me, I will make my remarks."

The President said:—

"Certainly."

The Hon'ble Mr. Das said:—

"This I oppose because it is really injurious to the interests of the raiyat. What was the actual state of things when the revisional settlement work began? From the year 1840, when we had a revenue settlement to sometime in 1890, the raiyat was in the habit of breaking up waste land and bringing it under cultivation and enjoying the produce without paying any rent for it, because the zamindar did not care to measure the land. From time to time the zamindar measured the land and then they settled up accounts and the raiyat paid something. Of course it will be said that he was not a raiyat there; it was the zamindar's property and he was encroaching upon it. So he has no doubt in that case, but the zamindar by custom had allowed him; there was good feeling and the zamindar showed him that indulgence. But the Revenue settlement work began. To quote the words of the Hon'ble Mr. McPherson he says:—

'The Government of India have suggested that the relations of landlord and tenant in Orissa are not such as to justify interference of this kind, but in my opinion there is nothing which is more essential for the preservation of satisfactory agrarian conditions in Orissa than the authoritative settlement of the disputes that have arisen in the course of revision, or will arise in the course of maintenance, between landlord and tenant over this and other like matters. It is one of the regrettable results of revision work that it has brought to the prominent notice of the proprietors thousands of cases of petty extension of cultivation, each of which has become a bone of contention between landlord and tenant, the landlord claiming that the tenant is a trespasser and refusing his permission to the inclusion of the area in the original tenancy except on payment of a rack-rent, the tenant claiming, according to old custom, to hold at the average village rate or at the rate paid for similar lands in the vicinity. Had there been no revision settlement and no maintenance, the tenants would, in 19 cases out of 100, have gone on extending their cultivation without let or hinderance and at the next land-revenue settlement they would have been assessed to rent for the excess area at the average village rate, without any claim or remonstrance on the part of the zamindar. During the course of the last revenue settlement operations, no proprietor, to my knowledge, ever maintained that his tenant was a trespasser in respect of excess area, or claimed a rent in kind The custom is undoubtedly, as stated by Mr. Taylor, that tenants in Orissa break up waste lands in villages with or without the express consent of the landlord, and from time to time the latter measures up the new cultivation and settles a fair rent which formerly used to be the village rate for similar lands in the vicinity. The extreme rise of prices in recent years has tempted the cupidity of landlords, and they are endeavouring to break down

* i.e., Bengal Act VI of 1908.

the old custom It is our duty to stand between the landlord and tenant and see that the latter is not wronged by the former. We have largely created the difficulty by our interference. We should not run away from it.'

"They say 'we have largely created the difficulty by our own interference and we should not run away from it' and to-day they want to interfere again and bring about unfriendly relations. It reminds me of the mother-in-law in an English house—I don't know what it is in a Scotchman's house. In an Englishman's house the mother-in-law comes there and disturbs the friendly relations in the family, and then she says 'you don't agree and I must be here to see that you do agree.' But this disagreement comes about by her presence and yet she says she must be there.

"Looking at it from a serious point of view, there is the Government of India's opinion that the relations between the landlord and tenant would not justify such a measure. This is brought from Chota Nagpur. But how long has it been in Chota Nagpur? It has been there from 1908. I was reading only the other day a part of the speech delivered by the Lieutenant-Governor of East Bengal—a part of the farewell speech to the Council, and there he said 'experience should be the basis of legislation and we must proceed slowly.' We lose sight of the fact that during the last few years there have been several Acts introduced into Chota Nagpur with a view to place on a satisfactory basis the relations of the landlord and tenant there. We also know all about the Munda raiyats and this Act has been in existence only for 2 years, and so little known about it when the Bill was introduced into Council those gentlemen who are responsible for the Bill had not thought of introducing it into the Bill: not only that, but I beg to raise a very serious objection which, in my honest opinion, is deserving of consideration, that is, having in view that remark from the Government of India that the relations of landlord and tenant do not call for such a thing, I beg to inquire whether the consent of that Government has been taken to the introduction of this special clause by the Select Committee in that Select Committee."

The Hon'ble MR. MCPHERSON said:—

"May I rise by way of explanation merely to point out that this is not a clause introduced by the Select Committee? The principle was already embodied in the Bill in clause 148, and has been sanctioned by the Government of India. It is the same principle in a different place."

The Hon'ble MR. DAS said:—

"It is the same principle but it is very different in form. Then Sir, we have had sufficient experience during the revision and Revenue settlements of Orissa as regards the prudence and desirability of introducing one Act which was meant for one part of the country in another part of the country. The Bengal Tenancy Act* was introduced and after all these troubles Government found out that a separate Act was necessary, and now in the face of that experience—an experience the result of which is before us and has been the occasion for much discussion in this Council—it is decided to import into Orissa a part of Chota Nagpur Act.

"Looking at the Chota Nagpur Act† I find, this, Sir, that the oral or written consent of the landlord for the conversion of a raiyati holding shall be required in every case. Now the state of things in Chota Nagpur is very different. *Korkar* means lands, by whatever name locally known, such as *bahbula*, *khandwal*, *jalasan* or *arial* which has been artificially levelled or embanked primarily for the cultivation of rice, and which previously was jungle, waste or uncultivated, or was cultivated upland or which though previously cultivated has become unfit for the cultivation of transplanted rice. These different kinds of waste lands include also lands which have been cultivated once and have been allowed to grow waste. Then the condition of things is very different in Orissa, and nobody can say how this will work in Orissa. Then the introduction

* *i.e.*, Act VIII of 1885. † *i.e.*, Bengal Act VI of 1908.

of this into Orissa will at least disturb the happy state of things and peaceful state of relations between landlords and tenants in Orissa which have existed hitherto. Who wants it? Neither the zamindar wants it nor the raiyat wants it. He may be foolish. He sleeps over his rights. He allows the raiyat to cultivate his lands without taking any rent from him. That is his lookout. But I suppose he is not so foolish, but knows that, after all, the raiyat is something like a garden to him. Every time he goes to him, he will have something from him, and therefore he allows him to have all these advantages. Then the raiyat does not want it. This is introduced by the Settlement Department. The Settlement Officer is there and he says: 'I have said that I have created the disturbance, and I must be here because I mean to do the same thing which created the disturbance before.' That is the sort of argument. I submit this ought to be removed and further it is not called for. It is really legislating to disturb a happy and peaceful state of things. We do not want to increase litigation and friction between the landlords and tenants. The one is rich and the other is poor. There must be a conflict of interests between these two classes of people, and the less the prominent points of this conflict are brought to the notice of the parties, the better for the parties, and the better will be the relations between them. If an attempt is made by legislation to bring into prominence the relations between the two, more frequently, the result will be friction, and I think peace ought to be bought at any price, even at the price of the desire to legislate."

The Hon'ble Mr. MADDOX said:—

"Sir, I think that if an Uriya raiyat were here to listen to the latter part of the debate he would perhaps recognise his mother-in-law. I do not see how the Hon'ble Mr. Das can say that this clause is not designed in the best interests of the raiyats. It is designed to give them protection and to preserve to them the fruits of their labours subject to proper control by the landlords. I may say that this clause incorporates one of the conditions on which this legislation was founded. Many grievances were considered and as the Hon'ble Mr. Das mentioned yesterday, the *bajiaftidars* were one of the classes who were found to have been wrongly recorded. The *bajiaftidars* have now been put on a better basis in this Bill, as also the *chandnadars* and the proprietary tenure-holders and others. This provision is one of the means which have been sought in this Bill to redress the grievances so far as the raiyats are concerned, and there are others for the landlords and the zamindars. It was found that they had difficulty in paying their land-revenue and a concession has been devised whereby they shall get as an addition to their private lands, lands which were found in their cultivation at the last settlement. These lands will be recorded as their *nij-jote* or private lands on which occupancy-rights will not accrue as an addition to the *nij-jote* lands which they had before, that is to say, the proprietors' private lands will be increased by double the amount which they formerly had. In return for this concession the zamindars are asked to recognise the lands which the tenants have reclaimed by their exertions. It is a part of the concession which the landlords will give up, in return for which they will get a concession of increased area of private lands. I think that this particular clause is a very fundamental clause indeed, and I beg the Council to retain it."

The Hon'ble Mr. H. MCPHERSON said:—

"Sir, I will first endeavour to explain to the Council the history of this clause as it appears not to be clear. This and the ten following amendments relate to the reclamation of waste lands by raiyats. In the course of the revision settlement it was found that raiyats were in possession of areas, usually of inconsiderable extent, which from a comparison with the maps and records of the previous settlement appeared to be reclamations of former waste lands. A considerable amount of dispute arose over these petty reclamations, the raiyats contending on the one hand that they brought them under reclamation in accordance with ancient custom or with the consent, tacit or expressed, of the landlord or his local agent, the landlord contending on the other hand, that the reclaimers were trespassers. The disputes were in practically all cases,

amicably settled on the interposition of Assistant Settlement Officers, the landlords withdrawing their objections on receipt of a small *salami* from the raiyat and a fair and equitable rent was settled for the additional lands in accordance with the provisions of section 52 of the Bengal Tenancy Act,* corresponding to clause 54 of the present Bill. When the Hon'ble Mr. Maddox explained to the Orissa Committee of 1909 the concession which he porposed to recommend to Government with regard to private lands of proprietors in Orissa the proprietors who took part in the proceedings acquiesced in his proposal that the Orissa Tenancy Bill should include provisions on the lines of the Chota Nagpur Tenancy Act for the assessment of new reclamation to which landlords had not taken objection within two years of its commencement. These provisions were embodied in clause 148A, which is a part of the maintenance chapter of the Bill. It is still uncertain whether the policy of maintenance will be extended to Orissa and it is possible that Chapter XII may never be given effect to. The Select Committee have therefore repeated the provision of clause 148A with certain modifications in this clause 54 A. If there be a periodical revision of records at regular intervals of three or five years, landlords will receive up to date maps and records of their villages and will be in a position to detect with ease encroachments on waste lands. Under these circumstances, there is no reason why provisions which find a place in the Chota Nagpur Tenancy Act, should not apply to areas in which the provisions of Chapter XII are in force. The case is somewhat different in areas that are not affected by Chapter XII. In such areas, or throughout Orissa, if it be decided to have no maintenance of records in Orissa, it was thought by the Select Committee that two years was too short a period in which to expect a landlord to take cognizance of unauthorised extensions of cultivation. The period was accordingly extended to four years. A further concession was made that if the reclaimed areas were situated in tracts of waste land that had not yet been included in villages as defined in section 3, the ordinary 12 years' rule should apply. Such tracts are said to exist in some of the larger permanently-settled estates like Kujang or Kanika, and it was represented that reclamation may go on undetected in such areas for more than four years. It was therefore reasonable to make this concession in their favour. I oppose this and the other amendments to clause 54A because I consider the clause to be necessary for the proper administration of the agrarian law and the regulation of the relations of landlord and tenant in Orissa. If a landlord neglects his estate to such an extent as to fail to detect for four years extensions of cultivation, it is only fair that he should pay for his neglect. It is grossly unfair that the average mofussil raiyat who has spent his time, labour and money in making an addition to his holding, either in ignorance of the fact that his landlord's written or specific consent is necessary, or under the impression that he has made the reclamation with his landlord's knowledge or with the tacit consent of his landlord or of the landlord's local agent, should at the end of four, six or ten years be liable to be turned neck and crop out of the land which he has redeemed from barrenness and converted into a source of profit both to himself and his landlord. What we provide is that in such a case the labourer shall retain the land on condition that he pays a fair and equitable rent for the same. The right of the reclaimer has always been regarded with consideration in the agrarian economy of India. Section 52 is a testimony to that, indicating as it does, that the common practice is to measure up lands periodically and assess additional areas that may be found to have accrued to holdings by reclamation. It was the old custom of Orissa. When the last revenue settlement of Orissa was made, rents were adjusted on an area basis and no landlord ever sought to deny the right of his raiyat over any area that appeared to be in excess of the previous settlement area or the area shown in the landlord's own papers. I rest my defence of this provision on grounds of common honesty and equity. The clause as it was drafted commended itself to the approval of the landlords who were on the Select Committee. I would ask those of them who have now proposed

* i.e., Act VIII of 1885.

these amendments to display the spirit of generosity and equity towards their tenantry in this matter and to withdraw their opposition.

"Before sitting down, I wish to make a few remarks regarding some points raised by the Hon'ble Mr. Das. I will first deal with his objection that in this particular matter we are copying from the Chota Nagpur Tenancy Act a provision that has only been in force for four years, and that four years is not long enough to enable us to judge of its working. He has also told us that experience should be the basis of legislation To my mind inclusion of this provision in the Chota Nagpur Tenancy Act is a very strong argument indeed for its inclusion in the Orissa Act The case of Chota Nagpur is exactly on all fours with that of Orissa. The old custom was undoubtedly in Chota Nagpur, as in Orissa, that raiyats who made additions to their holdings by reclamation had rent assessed on these additions. But what is now happening in Orissa happened also in Chota Nagpur. The landlords instead of following the old custom began to put forward the contention that the raiyats were trespassers in respect of these additional areas. I may here read a passage from Mr. John Reid's edition of the Chota Nagpur Tenancy Act. The language in which he explains the reason why this addition was made to the Chota Nagpur Act runs thus:—

> 'The common practice according to which some landlords used to allow raiyats to prepare *korka* without objection for a period of four or five years, and then sue them for ejectment as trespassers when the lands became valuable, is met by the provisions of sub-section (3). Unless the landlord now sues for ejectment within two years from the date on which the cultivator commenced to prepare the land, he will be deemed to have given consent and to have condoned the trespass (if any).'

"That is exactly what we are doing in Orissa. We find that landlords are beginning to object to these petty reclamations and to threaten that they will sue the raiyats in the Civil Courts for ejectment. As a matter of fact they have sued in some cases, but they have never pressed the plea of trespass home. We have settled, as I have said, thousands of these cases in the revision settlement without objection and similar disputes which have gone to the Special Judge or the Civil Court have been settled amicably in the same way.

"In these circumstances we have embodied in the law a provision that if reclamation has gone on without objection for a certain period, say four years, the landlord will be presumed to have given his consent and to have known that the raiyat is reclaiming the lands in question. In some ways I am indebted to the remarks that have fallen from the Hon'ble Mr. Das, because they support the arguments on which we have based the introduction of this provision into the Act. He has told us that it has been from time immemorial the custom in Orissa for raiyats to reclaim additional areas, and to pay additional rent for them, when they are brought to light by periodical measurement. It is because this old custom is being infringed, that we are endeavouring to provide this compromise in the Bill.

"Then, the Hon'ble Mr. Das has taken hold of some opinions that I expressed elsewhere on this subject, to discuss what is really a different subject, viz., the subject of maintenance of records. That will come on in due time. What I want to point out to Mr. Das is that you do not avoid the difficulty by excluding a provision of this kind from your Bill. We should merely be running away from the difficulty if we took no action in the matter. The question has arisen. The doctrine of trespass is being maintained by some landlords, and, as a matter of fact, suits are being filed for the ejectment of reclaimers. I do not know in what sense Mr. Das can represent himself as a friend of the raiyats in this matter, when he asks the Council to exclude this clause from the Bill. If no action be taken, the question will only be postponed until the next maintenance operations, if there be any such, or until the next revenue

"The Hon'ble Mr. Das says that by this measure we are only going to disturb the friendly relations that subsist between landlords and tenants in Orissa. He says that the Orissa landlords are people who sleep over their rights. That is just what we want to avoid. We do not want them to sleep over their rights for ten or twelve years and then wake up to find valuable plots of land, made by the raiyats, which they can claim as their own. We want to have the matter decided on the spot and at once. With these remarks I oppose the amendment."

On the Hon'ble Mr. Das rising to reply, the President said :—

"I do not think that you have got the right to reply in regard to this."

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said :—

"He also has a motion on it."

The PRESIDENT said :—

"He ought to have moved the amendment first if he wanted to have the right of reply."

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said :—

"I think, Sir, that the landlords in Orissa are not very interfering and do not interfere with such cultivation, and the present happy state of things will be disturbed by the introduction of this new clause. Therefore I wish to press this motion."

The motion was then put and lost.

The following motion was, by leave of the President, withdrawn :—

132. The Hon'ble Mr. M. S. Das to move that clause 54A be omitted.

133. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "oral or" in line 2 of clause 54A (*1*) be omitted.

He said :—

"Sir, these words will unnecessarily increase litigation. In every case the trespasser shall raise the plea of oral consent. It is difficult to decide a case on oral evidence, and as this is an exceptional privilege to the raiyat, we should confine ourselves to 'written consent,' which will be easy to prove or disprove."

The Hon'ble MR. MCPHERSON said :—

"I do not accept this amendment. I think it is better to leave the words 'oral or,' as they are in the clause."

The motion was then put and lost.

The following motions were, by leave of the President, withdrawn :—

134. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "oral or" in line 2 of clause 54A (*1*) be omitted.

135. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that clause 54A (*2*) be omitted.

136. If motion No. 131 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that clause 54A (*2*) be omitted.

137. The Hon'ble Babu Hrishikesh Laha moved that the word "twelve" be substituted for the word "four" in line 3 of clause 54A (*2*).

He said :—

"Sir, this provision lays the axe at the root of proprietary right. The principle of the right of property is that a man is not only allowed to dispose of his land usefully, but also to let or refuse to let at his own pleasure without anybody's leave, in fact to do what he likes with his own. This clause gives right to any trespasser who may scatter a few seeds upon a plot of land unknown to the landlord, and there is no reason whatever why a landlord

should be compelled to recognise him as a tenant after a short period. The raiyat may be a most undesirable person, and the landlord will have no option to pick and choose and settle with another raiyat who may give a better rent and better security for the payment of such rent in consideration of the increase of population, increase of agricultural profits and increase of demand for land. If for some reason the trespasser remains in possession and if he refuses to execute a lease tendered by the landlord, the landlord will be driven to the necessity of instituting a suit in order to obtain a fair rent from him, and he will have no right to deal with him at his discretion. If this clause be passed they will effect a redistribution of property, the raiyats being given a right which they do not now possess but which they will try to obtain by hook or by crook, and the landlords relegated to a back seat though their responsibilities as owners will remain just the same. In fact this clause proposes a redistribution of property between landlord and tenant without offering any compensation to the landlord for the deprivation of the sum of his rights. It will set up class against class and aggravate the evil of litigation. By clauses 110 and 257 the rights of the landlords both in temporarily and permanently-settled estates to contract with their raiyats have been taken away and the Revenue Officer has been made the arbiter of their fortunes, and now the power of the landlord even to drive away a trespasser from his own land has been withdrawn, and this I should say is the last straw to break his back.

"No reason has been assigned why the period of twelve years provided by the general law of limitation for bringing suits against trespassers should be curtailed to four and two years in permanently and temporarily-settled estates, respectively. The period of twelve years was provided after due deliberation. The difficulty and inconvenience of the landlord may be best realised if the trespasser can manage, in collusion with the landlord's agent and employés, to keep back all information about the occupation from his knowledge. This collusive and clandestine occupation will tend to increase the value of the land, and will hold out a premium to encroachments without taking into account the loss which the landlords might sustain. Under the circumstances the periods prescribed in the Bill are too short, and the general law of limitation should be retained."

The Hon'ble MR. MCPHERSON said :—

"Sir, I oppose this amendment because I think that the Council have practically voted against it already. If you substitute '12' for '4' in clause 54 (2) you may as well wipe out the section altogether. As the Council have voted in favour of the section, I do not think the Council can possibly accept the suggestion that 12 be substituted for 4."

A division was then taken, with the following result :—

Ayes—12.	*Noes—29.*
The Hon'ble Babu Bhupendra Nath Basu.	The Hon'ble Mr. Slacke.
„ Rai Sita Nath Ray Bahadur.	„ Raja Kisori Lal Goswami.
„ Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan.	„ Mr. Greer.
	„ Mr. Macpherson.
	„ Mr. Collin.
„ Raja Rajendra Narayan Bhanja Deo.	„ Mr. Stevenson-Moore.
	„ Mr. Chapman.
„ Mr. Saiyid Wasi Ahmad.	„ Mr. Finnimore.
„ Maulvi Saiyid Muhammad Fakhr-ud-din.	„ Mr. Kerr.
	„ Mr. Stephenson.
„ Babu Hrishikesh Laha.	„ Mr. Maddox.
„ Mr. Reid.	„ Mr. Küchler.
„ Rai Sheo Shankar Sahay Bahadur.	„ Mr. Morshead.
	„ Sir Frederick Loch Halliday, Kt.
„ Mr. Das.	
„ Rai Baikuntha Nath Sen Bahadur.	„ Mr. Cumming.
	„ Mr. Bompas.

Ayes—concld.	*Noes*—concld.
The Hon'ble Khan Bahadur Maulvi Sarfaraz Husain Khan.	The Hon'ble Mr. Oldham.
	,, Mr. H. McPherson.
	,, Babu Janaki Nath Bose.
	,, Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.
	,, Sir Frederick George Dumayne, Kt.
	,, Lieut.-Col. G Grant-Gordon.
	,, Babu Kirtanand Sinha.
	,, Babu Deba Prasad Sarbadhikari
	,, Mr. Apcar.
	,, Mr. Stewart.
	,, Mr. Golam Hossein Cassim Ariff.
	,, Maulvi Saiyid Zahir-ud-din.
	,, Babu Braj Kishor Prasad.

The following Members were absent:—

The Hon'ble Mr. Mitra
,, Kumar Sheo Nandan Prasad Singh
,, Maharaja Manindra Chandra Nandi
,, Maharaj-Kumar Gopal Saran Narayan Singh.
,, Mr. Norman McLeod.
,, Dr. Abdullah-ul-Mamun Suhrawardy.
,, Mr. Dutt
,, Babu Mahendra Nath Ray.
,, Mr. Dip Narayan Singh.
,, Babu Bal Krishna Sahay.

The result of the division was *Ayes* 12, *Noes* 29, and the motion was therefore, lost.

138. The Hon'ble Babu Hrishikesh Laha moved that the word "eight" be substituted for the word "four" in line 3 of clause 54A (*2*).

He said:

"For reasons stated I beg to move that the word 'eight' be substituted for the word 'four' in line 3 of clause 54 (*a*) (*2*)."

The Hon'ble MR. MCPHERSON said:—

"I cannot accept this amendment, Sir. I have already explained that in my opinion four years is the maximum limit that ought to be allowed for interference by the landlord. There are several amendments suggesting 12, 8, and 6 instead of four. I ask the Council to stick to the period which is in the Bill. I think this is a matter in which the zamindars might profitably display a little generosity and equity towards their tenants, instead of making this persistent opposition to the provisions of the section. If they are going to admit the principle at all, they had better admit it generously than attempt to whittle it down in this way."

The motion was put and lost.

139. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the word "six" be substituted for the word "four" in line 3 of clause 54A (*2*).

He said:—

"I had a modest amendment. I thought the Hon'ble Member in charge of the Bill would be able to accept it, but since he has opposed the other amendment and is not prepared to make any concession, I beg to withdraw it."

The motion was then, by leave of the President, withdrawn.

The following motion was, by leave of the President, withdrawn:—

140. If motions Nos. 131 and 136 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the word "six" be substituted for the word "four" in line 3 of clause 54A (*2*).

141. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the following be added after clause 54A (*3*), namely:—

"(*4*) Nothing in this section shall apply to permanently-settled areas."

He said:—

"There are large areas of waste land in permanently-settled estates. It is to the benefit of the proprietors of those estates to encourage cultivation. Every facility is given to authorized cultivation. Clandestine cultivation ought to be checked. The following are the principal arguments put forth for retaining this clause:—First, as the Government has been generous enough to allow the proprietors of the *nij-chas* lands that are in actual cultivation in the temporarily-settled area, it is proposed to give some concession to the raiyats in this Bill. But the Bill does not give any compensation to the permanently settled area, so I do not see why the right should be allowed here. The second argument is that the extension of cultivation will be checked, or the legitimate growth of land-revenue interfered with. This argument has equal force so far as the permanently-settled area is concerned. It is to the interest of the landlords to extend cultivation, and as the *jama* is settled in perpetuity there is no question of increase in land-revenue being interfered with. Sir, on these grounds I move 'that nothing under this section shall apply to permanently-settled areas.'"

The Hon'ble MR. H. MCPHERSON said:—

"Sir, I oppose this amendment. After the long explanation I have already given of the section I think it is unnecessary to speak at any length on this amendment. One justification for this section is, as my hon'ble friend Mr. Maddox has pointed out, that it was part of a bargain that was made with the temporarily-settled proprietors; but I rest the section on the broader grounds of common honesty and common equity. I have already explained that I think it is grossly unfair to allow a raiyat to cultivate for four years—twelve years in the case of the larger tracts of waste land—and then to turn him out of the land after he has made it profitable both to himself and the landlord. On these broader grounds I oppose any curtailment of scope of operation of this section."

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO said:—

"The Hon'ble Mr. McPherson and also the Hon'ble Mr. Maddox have submitted that this is a compromise between the temporarily-settled zamindars and the Government, but I do not think the zamindars of the permanently-settled area were ever consulted in this matter, and as regards the constitution of the Orissa Committee, there was no one from the permanently settled area in that Committee; and, Sir, it is rather hard on the proprietors of the permanently-settled areas. If there is a custom such as the Hon'ble Member says to exist in Orissa, such custom has not been enquired into in the permanently-settled area, and so the Council does not know what the custom is in the permanently settled area. When that has not been ascertained I think that the provisions of this clause should not be applied."

OATH OR AFFIRMATION OF ALLEGIANCE.

The Hon'ble Mr. Butler made the prescribed Oath of his Allegiance to the Crown.

THE ORISSA TENANCY BILL, 1912.

Clause 57.

142 The Hon'ble Mr. Saiyid Wasi Ahmad moved that the following be substituted for clause 57, namely:—

"57. When a tenant makes a payment on account of rent, the payment may be credited to the account of such year and instalment as the landlord thinks fit."

Appropriation of payments.

He said:—

"The clause was divided into two parts in the original Bill, and this clause is a complete production of section 55 of the Bengal Tenancy Act. I am aware, Sir, that the provisions of this clause are mainly based on sections 59 and 60 of the Indian Contract Act. Section 59 provides that when a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation or under circumstances implying that the payment to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly. Section 60 provides that where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits. Now it seems to me that the application of these two sections of the Contract Act in the case of landlord and tenant is not right. The relation that exists between the debtor and his creditor, to my mind, materially differs from the relation that exists between the landlord and his tenants. Under these two sections which mainly govern the case of a creditor, it is possible that a debtor under certain circumstances, if there be more than one debt, be obliged to make a condition that he is making the payment towards a particular debt. For instance, a man has borrowed money from a creditor, and mortgaged a property of his, and similarly he has mortgaged another property and also a third property. Therefore he owes to the creditor three distinct debts under three distinct mortgage bonds. Circumstances may arise in his case under which he may require a particular property to be freed and he may make the payment intimating to the creditor that this particular money should be credited to the particular debt for which that particular property was mortgaged. But the case of a tenant materially differs inasmuch as a tenant when he owes rent to a landlord he can have no occasion or necessity to intimate to the landlord at the time of payment that he is making the payment for a particular time and for a particular instalment, unless it be conceded that the tenant at the time of making the payment has in view the application of the question of limitation. If the tenant has not paid for a series of years and if he goes with one year's rent to his landlord and tells him that he pays for the current year, the presumption will naturally arise that he wants to take a mean advantage of the law of limitation. There is the question of limitation pending, and why should the tenant pay for the current year when he owes his landlord for three or four years. The Hon'ble Member in charge of the Bill has told us that the Bengal Tenancy Act has worked satisfactorily for the last very many years, and therefore there is no reason to go against that Act.

So far as Bihar is concerned, and so far as the collection in Bihar by landlords is concerned, I can very safely assert that this particular section of the Bengal Tenancy Act has not been taken much advantage of by the tenants. The usual way in Bihar is that when a tenant comes to make payment in a zamindar's cutchery he simply says 'Here's your rent,' and the money is credited from the first year in which the defalcation took place In that way the landlord and tenant make their settlement.

"There is another remark which I should like to make. It will unnecessarily encourage litigation. That there would be a strained relationship produced between the landlord and his tenant if the clause is passed in its present form, goes without saying. At present whenever the question of limitation comes in and the zamindar is thinking of instituting a suit against his tenant, the tenant comes to him with one year's rent and tells him: 'Look here, I pay you one year's rent. You can very well wait for another year more.' And the zamindar agrees, and waits for another year before he brings a suit against his tenant. But if you allow this clause to be passed, the result will be that the tenant will want his landlord to credit his money towards a particular year's rent and the zamindar will also, to avoid the law of limitation, will at once rush into Law Courts. This sort of unnecessary litigation should always be avoided. I should like to be enlightened by my friend, the Hon'ble Mr Das, as to how this section has been working in Orissa, but as I have already stated, that in Bihar there has been no occasion in which a tenant has desired to make use of this section. And I ask the Hon'ble Members who have held charge of districts in Bihar to cite me cases in which the tenant demanded that under the section of the Bengal Tenancy Act, he wanted the money to be paid against any particular date.

"There is also another danger if you allow this clause to be passed into law, and it is this: Where is the remedy for the tenant so far as evidence goes? Here you give him a power to go to the zamindar's cutchery and tell the *amla* of the landlord that he pays rent for a particular year. I presume he gives him a verbal intimation. Then consider the actual position In the cutchery the tenant, who is generally an illiterate person, makes payment for a particular year. His case is that according to the term of section 57, he, at the time of payment, intimated to the servant of the zamindar verbally that the rent is meant to be credited for a particular year. The *amla* of the zamindar, in order to avoid limitation, enters the money against a year different from what is proposed by the tenant. Now, in most cases, the tenant is an illiterate and uneducated person. He cannot read the receipts. He pays down the amount with a clear intimation to the *amla* that it is for the year say, '297. The *amla* credits it against 1295. The tenant goes away from the cutchery. Several days after he get his receipt read by somebody, and finds that a wrong entry has been made. What is the remedy that you provide for him in a case like this? All that he can do is to institute a case. He can only go to the Civil Court. If he, at the time of making payment intimated to the *amla* of the zamindar that the payment was meant for a particular year, his receipt shows otherwise He has no evidence whatever. At the time of payment he went alone to a place where he can get no evidence from if the zamindar chooses to be dishonest. The patwari will swear against him. Now what will you be encouraging? The tenant will naturally feel that at the time of going to the cutchery he was alone. And as he cannot produce any evidence, he will be guided by the circumstances of the case, and try to secure false evidence in support of his contention. He will go to some other tenants, and say: 'Look here, you come and depose in Court, that at the time I went to make payment, you also came with me, and heard me telling the *amla* to credit the amount to such and such a year' Now you are practically—if you just think about the consequences of the section—encouraging false evidence got up not only by the tenant but the zamindar's *amlas* will also depose falsely. I, therefore, submit for the consideration of Your Honour and also the Members of this Council that if you consider the two clauses of section 57 carefully, you will come to the conclusion that it will cause hardship both to the landlord and the tenant. Therefore, Sir, in the interest of both, I desire to move that in the case of the landlord and tenant a difference ought to be made from the

Indian Contracts Act, and the zamindar ought to be given the option of crediting any amount of money that is paid to him by a tenant into any year that he wishes to do Why should you, indeed, protect the tenant, who in this instance, is the defaulter. He is the man who has not paid rent. He is decidedly in fault. He comes after 3 or 4 years, and says, 'I want to pay for one year only, and I want to pay for a particular year.' After all, the zamindar is the creditor, and option should be given to him to credit that amount of money for any year he considers necessary, and it will prevent at least one thing, and that is, that zamindars who do not like to institute suits against their tenants will not have to go to Law Courts. I have known of cases in which the zamindar settles with the tenant by taking from him one year's rent and crediting it to the first year of default. This prevents him from going into Law Courts to guard against limitation and this also satisfies the raiyat."

The Hon'ble Mr. Das said:—

"Sir, I had no intention to speak on this amendment, but as the Hon'ble Member who has moved the amendment has referred to me, all that I can say is that the question is one which raises a difficult problem as to what can be done for the raiyat He is ignorant He pays his rent for one year, and the receipt is given for another year He cannot read. There will always be men in the world who will take advantage of ignorance of other people, and surely zamindars' men are not above that class. In this Council legislate as much as you can, zamindar's *gomasthas* will not come from a different class of people. Nothing can make the raiyat educated or literary. An illustration suggests itself to my mind. I hope I will not be misunderstood. When I make use of illustrations I do not mean to offend any ones feelings. The illustration that suggests itself to my mind is this: A man who never learnt to read and write saw people use glasses who were supposed to be learned. He went to a spectacle shop. He was asked to try pair after pairs but nothing suited him, as looking through the glasses he saw that printed letters were to him as meaningless as they were before. Then the shop-keeper asked him, do you know to read? The man replied why should I come for glasses if I know to read? So we think that as soon as we pass a law beneficial to the tenant, we think he knows his rights. But that is far from being the fact. I hold myself second to none in this Council in my endeavour to help the raiyat. But there is no getting out of difficulties You may change the law, the same defect arises. If the zamindar chooses to be oppressive, the raiyat can do nothing. I do not know anything of Bengal, but my experience in Orissa is that there are not many zamindars of that class there. There are a few, but they are exceptions."

The Hon'ble Mr. Kerr said:—

"Sir, I regret that so much eloquence should be wasted, but I cannot advice the Council to accept the amendment. The Hon'ble Mover of the amendment has given us plenty of *á priori* reasons, but we must now proceed along the duller paths of experience and common sense. The simple facts are that there has been no litigation and no strained feelings over this section for the last 20 years, and we need not pay any attention to *á priori* reasons. The clause which is under discussion is a reproduction of section 57 of the Bengal Tenancy Act* and has been in force in Orissa since 1891. I find that there has been no ruling of the High Court under this section, and as I have said before in connection with another section, the Council may safely take it that a provision of the law which has never been brought before the High Court can be treated as thoroughly satisfactory. On the merits also there is not much to be said for the Hon'ble Member's proposal. The raiyat is the debtor, and when he brings in money to pay his dues it is surely for him to say to what particular portion of the arrears the payment should be applied. I do not see how such action can in any way injure the landlord; but the Hon'ble

* i.e., Act VIII of 1885

Member's proposal might injure the raiyat. The Hon'ble Member has told us that there is the question of limitation, of which he might take advantage. But there is also the question of enhancement. Supposing a raiyat is in arrears of rent for three years and supposing that during the three years the landlord has made an enhancement of rent which the raiyat has not accepted; the landlord if he were left to himself would apply the payment in such a way as to make it easy for him to prove that an enhancement had taken place, but there is no reason why he should be given these facilities. On the other hand there is every reason why the raiyat should be able to say: I wish the landlord to apply this payment to the liquidation of undisputed arrears and to leave the question of the disputed arrears for decision by private arrangement or by a competent Court. The Hon'ble Member is mistaken in thinking that no use is made of the section in Bihar Directly a rent dispute arises, the first thing a tenant does is to endeavour to have his payments applied in such a way as not to prejudice his side of the case The evidence is not always so clear as it might be, but this is because the landlord tries to manipulate the payments in such a way as to support his side of the case. But the tenant is entitled to the first say It is I believe a settled principle of law that a debtor who makes a payment has a right to stipulate to what portion of his dues that portion should be applied and there is no reason for altering this in the case of landlord and tenant. I must therefore ask the Council to reject the amendment."

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR said:—

"I think, Sir, that a legislative body ought not to abandon a principle which has been acted upon for over 50 years and a new departure ought never be made unless there is a very strong case made out. In the present Tenancy Act this principle has been adopted and a debtor has a right to make a payment of money specifying the way in which it is to be appropriated and it is not at all a technical matter. It is based on sound universal principles of justice and freedom of action. A debtor may say 'I owe you different items of money but I pay you this amount for the specified debt,' so he has freedom of action which is based upon universal principles of justice. As this principle has been acted on for over half a century, there is no reason why a new departure should now be made."

The Hon'ble MR. SAIYID WASI AHMAD said:—

"Sir, there was only one thing that I wanted to hear from the Hon'ble Member in charge in reply to my amendment, namely, what could be the motive of a tenant to go and dictate his terms to the landlord. I think that in the case of an ordinary debtor and creditor an occasion may arise in which the debtor may be almost forced to go to the creditor and dictate his terms, but in the case of a tenant who owes rent for three or four years can anyone possibly imagine a single case in which the tenant will be under the necessity of dictating his terms, that he owes money for a particular year and I fail to understand if such a case can ever be thought of and in the absence of such cases, the only conclusion that I can arrive at is that whenever a tenant will come to a zamindar and dictate his terms his object is to defeat the terms of the Indian Limitation Act and thus avoid limitation so that one or two years may expire and the zamindar may not institute a case against him for arrears of rent. Except this idea, I cannot for a moment conceive a case in which a tenant might say:—'Well, I owe you rent for four years from 1904 to 1907, but I pay you for 1907.' I submit, Sir, that unless and until substantial reasons are placed before the Council in support of the fact that there may be an occasion in which a tenant may be forced under certain circumstances to go and say that he wanted the payment to be made for a particular year. I think that the Council ought to accept this amendment."

A division was then taken with the following result :—

Ayes—6.	*Noes—34.*
The Hon'ble Raja Rajendra Narayan Bhanja Deo.	The Hon'ble Mr. Slacke.
„ Mr. Golam Hossein Cassim Ariff.	„ Raja Kisori Lal Goswami.
„ Mr. Saiyid Wasi Ahmad.	„ Mr. Greer.
„ Maulvi Saiyid Muhammad Fakhr-ud-din.	„ Mr. Macpherson.
„ Mr. Das.	„ Mr. Gollin.
„ Khan Bahadur Maulvi Sarfaraz Husain Khan.	„ Mr. Stevenson-Moore.
	„ Mr. Chapman.
	„ Mr. Finnimore.
	„ Mr. Kerr.
	„ Mr. Stephenson.
	„ Mr. Butler.
	„ Mr. Maddox.
	„ Mr. Kuchler.
	„ Mr. Morshead.
	„ Sir Frederick Looh Halliday, Kt.
	„ Mr. Cumming.
	„ Mr. Bompas.
	„ Mr. Oldham.
	„ Mr. H. McPherson.
	„ Babu Janaki Nath Bose.
	„ Maharaja Bahadur Sir, Prodyot Kumar Tagore, Kt.
	„ Sir Frederick George Dumayne, Kt
	„ Kumar Sheo Nandan Prasad Singh.
	„ Lt.-Col. G. Grant-Gordon.
	„ Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan.
	„ Babu Kritanand Sinha.
	„ Babu Deba Prasad Sarbadhikari.
	„ Mr. Apcar.
	„ Mr. Norman McLeod.
	„ Babu Hrishikesh Laha.
	„ Maulvi Saiyid Zahir-ud-din.
	„ Mr. Reid.
	„ Rai Sheo Shankar Sahay Bahadur.
	„ Rai Baikuntha Nath Sen Bahadur.

The following Members were absent:—

The Hon'ble Mr. Mitra.
„ Babu Bhupendra Nath Basu.
„ Rai Sita Nath Ray Bahadur.
„ Maharaja Manindra Chandra Nandi.
„ Maharaj Kumar Gopal Saran Narayan Singh.
„ Mr. Stewart.
„ Dr. Abdullah-al-Mamun Suhrawardy.
„ Mr. Dutt.
„ Babu Mahendra Nath Ray.
„ Babu Braj Kishor Prasad.
„ Mr. Dip Narayan Singh.
„ Babu Bal Krishna Sahay.

The result of the division was, *Ayes* 6, *Noes* 34, and the motion was therefore lost.

Clause 60.

143. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the following proviso be added after clause 60 (*3a*), namely:—

"Provided that the Collector shall not hold an inquiry or impose a fine if the tenant has already instituted a suit as provided in sub-sections (*1*) and (*2*) of this section."

He said:—

"Your Honour,—With your permission and with the previous consent and approval of the Member in charge I beg to move the above amendment in a slightly modified form. The amendment will run thus: That after sub-clause (*3b*) of clause 60, the following sub-clause (*3c*) be inserted:—

'(*3c*) Nothing in sub sections (*3a*) and (*3b*) shall apply if the tenant has already instituted a suit under sub-section (*1*) or sub-section (*2*).'

"I do not think that any speech is necessary in moving this amendment, inasmuch as I think the Hon'ble Member in charge will accept it."

The Hon'ble Mr. McPherson said:—

"Sir, I accept this amendment."

The motion was then put in the modified form and agreed to.

The following motions were, by leave of the President, withdrawn:—

144. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the word "summary" in the last line of clause 60 (*3a*) be omitted.

145. If motion No. 144 be carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the word "summary" in line 1 of clause 60 (*3b*) be omitted.

146. The Hon'ble Mr. H. McPherson moved that the words "on his own motion or" be inserted after the word "either" in line 2 of clause 60 (*3b*).

He said:—

"Sir, I propose that the words "on his own motion or' be inserted after the word 'either,' in line 2 of clause 3(*b*).

I do so because there is no provision in the sub-clause, as it stands, for the Collector taking action when the facts come directly to his notice, either as a revenue officer or as a court. Unless this small addition is made, then if the Collector be in camp and facts come to his notice, which render it desirable for him to take action under this section, he will have to go through the farce of having a report made to himself by a subordinate officer. Similarly, in the case of sub-clause (4), which provides for reports being made to the Collector when instances of neglect to give receipts come to the notice of Courts, I think it is desirable that the Collector should be able to take action of his own accord if the offence comes to his notice when he is himself sitting as a Court.

The motion was put and agreed to.

The following motion was by leave of the President, withdrawn:—

147. The Hon'ble Mr. H. McPherson to move that the following be inserted after clause 60 (*3b*), namely:—

"(*3c*) When a fine is imposed under sub-section (*3a*), the Collector may, in his discretion, award to the tenant, by way of compensation, such portion of the fine as he may think fit."

148. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "between the landlord and his tenant" be inserted after the word "proceeding" in line 1 of clause 60 (*4*).

He said:—

"Sir, this refers to the report made by any court or presiding officer that any landlord has failed to give a receipt to his tenant. It is desirable that he should not make such report unless he finds it in any proceeding between the landlord and his tenant. It is obviously unfair that such report be made behind the back of the landlord, and without giving him any opportunity of disproving this charge against him. As the section stands, the court or officer may come to a finding in a proceeding between strangers, which very often will not be correct and simply cause harassment to the landlord."

The Hon'ble Mr. McPherson said:—

"Sir, I cannot accept the addition proposed by the Hon'ble Member, because it is desirable that the sub-clause should be left as wide as possible. Most of the difficulties connected with the administration of the agrarian law are caused by the wilful neglect of landlords to deliver to their tenants the receipts prescribed by the law, and it is desirable to facilitate, as far as possible, the enforcement of the law. This addition will merely circumscribe the action of the courts in reporting cases of neglect when they come to notice. It is easy to imagine a case in which the proceedings are between landlord and landlord, and in which both landlords may have to give evidence regarding the receipt of rent from tenants. In such a case it may come to the notice of the court that receipts have not been granted in the proper form. I do not see why we should cut out any particular class of cases by making the proposed addition."

Clause 62.

The following motions were by name of the President, withdrawn:—

149. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "under sections 13A, 13B or 13C" in line 1 of clause 62 (*a*) be omitted.

150. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that clause 62 (*c*) be omitted.

10A. The Hon'ble Mr. H. McPherson moved that the word "or" be omitted after the figures and letter "13B" in line 1 of clause 62 (*a*), and that

the words "or under any law previously in force" be inserted after the figures and letter "13C" in the same line of the same clause.

The sub-clause, therefore, to run as follows, namely: —

"(*a*) registered under section 13A, 13B or 13C, or under any law previously in force, as sub-proprietor or tenure-holder, or"

He said:—

"I proposed this amendment in the separate list, because I thought it might meet a difficulty anticipated by the Hon'ble Rai Sheo Shankar Sahay Bahadur.

"The point is that we provide in clause 62 for a receipt being valid when it is granted by a sub-proprietor or tenure-holder duly registered under section 13A, 13B, or 13C, or duly recorded as such in a record-of-rights. The small point occurred to us that between the preparation of the record-of-rights and the commencement of this Act, there may be cases of registration under Act X of 1859. It is to provide for these cases that I propose this amendment."

The motion was put and agreed to.

Clause 65.

151. The Hon'ble Mr. Saiyid Wasi Ahmad moved that the word "shall" be substituted for the words "may, at the discretion of the Court" in lines 1 and 2 of clause 65 (*2*).

He said:—

"My object in making this amendment was that all such notices must necessarily be received by the landlord, so that no excuse could be made afterwards that they did not receive such notice."

THE HON'BLE MR. H. MCPHERSON said:—

"Sir, I object to this amendment. It may not be convenient in every case to serve notices by registered post. It may be much more convenient to serve them by hand or by other methods. There is no reason why we should tie down the Collectorate offices to any particular form of service."

The motion was then put and lost.

Clause 67.

The following motion was, by leave of the President, withdrawn:—

152. The Hon'ble Mr. M. S. Das to move that the words "whether tenure-holder or raiyat" be inserted after the word "*bajaftidar*" in lines 1 and 2 of clause 67.

153. The Hon'ble Mr. H. McPherson moved that the words "a *chandnadar*" be inserted after the word "rates" in line 2 of clause 67.

He said:—

"Sir, no provision is made in the Bill, as it stands, for the procedure to be followed in recovering arrears of rent from *chandnadars*, although they have now been classed as tenants. As their rents have been fixed for the term of the revenue settlement and they are practically on the same footing as *thani* raiyats, I propose that they be added to the enumeration in clause 67 of tenants whose holdings are liable to be sold in execution of rent decrees."

The motion was put and agreed to.

The following motions were, by leave of the President, withdrawn:—

154. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or an occupancy-raiyat" in line 2 of clause 67 be omitted.

155. If motion No 154 be carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the present clause 67 be numbered as sub-clause (1) of that clause, and that the following sub-clause be added, namely :—

"(2) Where a tenant is an occupancy-raiyat, he shall not be liable to ejectment in execution of a decree for arrears of rent, if the amount decreed is paid into Court within thirty days from the date of the decree, or, if the Court is closed on the thirtieth day, on the day upon which the Court reopens."

Clause 68.

156. The Hon'ble Mr. M. S. Das to move that the words "whether a tenure-holder or raiyat" be inserted after the word "*bajiaftidar*" in line 3 of clause 68.

157. The Hon'ble Mr. H. McPherson moved that the words "a *chandnadar*" be inserted after the words "raiyat holding at fixed rates" in line 3 of clause 68.

He said :—

"This amendment is consequential to the amendment No. 153, which I have proposed in dealing with clause 67."

The motion was put and agreed to.

Clause 69.

158. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the word "money" in line 1 of clause 69 be omitted.

He said :—

"Sir this word indirectly introduces a law that rent paid in kind shall bear no interest. There is no justification for this. In many cases the *Bhaoli* rent may be lower than money-rent, still the landlord will not be entitled to get interest. This law will act as an encouragement to the tenant not to pay his rent in kind. Even if limitation for such suit be one year as proposed, it may take the landlord years before he can realize his *Bhaoli* rent. Why should his just dues all the time bear no interest? It is unjust, unfair and inequitable, and the landlords have done nothing to deserve this treatment. I am aware that, under the corresponding section (67) of the Tenancy Act, a doubt is thrown whether that section applies to produce-rent, but the remedy lies not to exclude *Bhaoli* rent from this amended section, but to amend the section in such a way as to include *Bhaoli* rent. In any case, there is no justification for this alteration of the Tenancy Act."

THE HON'BLE MR. MCPHERSON said :—

"Sir, I oppose the amendment moved by the Hon'ble Rai Sheo Shankar Sahay Bahadur, because all the provisions about produce-rents were agreed to by the Orissa zemindars, who were consulted in the matter in 1909. They have also commended themselves to the Orissa Members. They are fair concessions and are justified by the fact that produce-rents are in all cases much higher in incidence than cash rents. All the various concessions about limitation of amount, limitation of period of recovery and exclusion of interest, have been approved by the local people concerned, and I do not see why the Hon'ble Members from Bihar should object to them."

The motion was then put and lost.

The following motion was, with the leave of the President, withdrawn :—

159. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that for the words "half the agricultural year" in line 3 of clause 69, the word "period" be substituted.

160. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "or of the institution of the suit,, whichever date is earlier," in lines 4 and 5 of clause 69 be omitted.

He said:—

"Sir, as it is now, the tenants, pay interest, either up to the date of payment or up to the institution of the suit, whichever date is earlier. When the suit is instituted and until it is decreed, no interest is paid, and after the decree, only about 6 per cent. is paid. So, if my motion be accepted, the interest at the rate of 12½ per cent. will be continued till the payment. This will be a great advantage for the prompt realization of rent."

The Hon'ble Mr. McPherson said:—

"Sir, I oppose this amendment on the gr clause reproduces the existing law and practice, and is the same as in the Bengal Tenancy Act. The plaintiff puts his full demand, including interest, into his plaint. The suit is then adjudicated upon. Rent suits do not, as a rule, take a very long time to try; it is usually three or four months, but the period may be longer or shorter, and, in any case depends much more on the action of the landlord and of the court, than it does on the raiyat. We think it is desirable that there should be no inducement given to the landlord to prolong the period of adjudication, nor do we think it is right, that while the landlord is taking his time over the case, or the court is postposing its disposal, interest should go on running against the raiyat. The court has power, under another provision of the Act, to decree damages if it thinks that the conduct of the raiyat deserves special notice. I do not think that sufficient reason has been shown in support of the addition proposed by the Hon'ble Member, and I therefore oppose it."

The motion was then put and lost.

Clause 70.

161. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the word "shall" be substituted for the word "may" in line 4 of clause 70 (*1*).

He said:—

"Sir, in Orissa, even up to 1907, the courts used to allow damages on suits for arrears of rent when it was proved to the satisfaction of the court that the tenants either refused or neglected, without reasonable or probable cause. But since the amendment of the Bengal Tenancy Act in 1907, probably in no case damages were allowed. So, under the circumstances, where the tenant has refused without any probable cause, if the word "shall" be substituted for the word "may," damages will be awarded in such cases."

The Hon'ble Mr. McPherson said:—

"Sir, I cannot accept this amendment, because I think we ought to leave the question of damages to the discretion of the Court which hears all the circumstances of the case. We do not want to convert our courts into machines. We should leave them a certain amount of discretion. By substituting the word "shall" for "may" you deprive them of their existing discretion. I therefore oppose the amendment."

The motion was then put and lost.

The following motion was, by leave of the President, withdrawn:—

162. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "These damages, if awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest at the rate of twelve *per cent.* per annum from the date of decree until payment thereof" be inserted after the words "as it thinks fit" in line 7 of clause 70 (*1*).

Clause 71.

163. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that clause 71 be omitted.

He said:—

"This section deals with the produce-rent. Drastic changes are made in the present Bill with regard to recovery of *Bhaoli* rent. In the first place it makes it illegal for the landlord to recover more than half the gross produce of the land. Secondly, it lays down that no interest on any account shall be payable for the *Bhaoli* rent and thirdly, it provides that one year instead of three years limitation shall apply to *Bhaoli* rent. The explanation states that, in estimating the value, the court shall be bound to do it according to the rates at the time of harvest. All these provisions are new and do not find a place in the existing law. There is no justification for the changes. No reason has been assigned why these drastic provisions are necessary in the case of Orissa zemindars, and not in the case of the zemindars of the other parts of the province. All the innovations made by this section are objectionable. The first part limiting the share of the landlord to one-half is apparently made to discourage *sanja* system in Orissa, which corresponds with the *mankhap* or *manhunda* system in Behar. I may be permitted to draw the attention of my Hon'ble friends from Behar to page 7 of paper No. 4, where Mr. Levinge says that the matter is important "as whatever is decided now may be taken as a precedent in connection with the treatment of *mankhap* rents in Bihar." They must not, therefore, think that they are not affected by this legislation. Sir, I do not see why there should be any objection to *sanja* rents. I have heard it often said by the tenants that next to money-rent they prefer the *sanja* or *mankhap* rent. It is to all intents and purposes money-rent. It does not fluctuate, it does not leave room for dispute or dissensions. The tenants prefer it because under this system they can cut and harvest the crops at their convenience, without interference from the landlord or his agents. In theory, the *adhbatai* or *dhulibatai* system is good, but in practice, it is source of some trouble to the tenants. He cannot do anything without the landlords *sirman* or servant deputed to get the crops divided. These men must not only be fed but must be paid something. So long as the crops are not actually divided, the tenant cannot take away any portion of his share without his landlord's consent. No such difficulty arises in *mankhap* or *sanja* system. He has absolute control over the entire crop. He knows what he has to pay, and above all he is independent of the landlord's agents. The only difference between money and *sanja* rent is that one is payable in money and the other is payable in kind. When I say that tenants prefer *sanja* system, I assume that the grains payable by him is a fair proportion of the gross outturn. If it is not fair, it must cause hardship but this applies to money-rent also. If the money-rent is not fair, it must cause hardship. If you are satisfied that in Orissa *sanja* rent is disproportionately high, the remedy does not lie in an indirect legislation you propose, but to take power to fix a fair and equitable rent. But there is no satisfactory evidence that *sanja* rent is high. Mr. Levinge says he has not enquired as to how far *sanja* rents are oppressive, but he says, he has heard no complaints in regard to them. If so, why you should condemn this system. The effect of the legislation you propose is that in bad years, the landlords will get less than what he would be entitled to under the *sanja* system, and in good years, he will not be entitled to more than the *sanja* rent fixed. Mr. Levinge justly observes at page 7 of his letter, dated the 28th November last, with reference to this provision "that it would be entirely one-sided, for it would give the raiyat the benefit of a bad year while conferring no corresponding benefit on the landlord in a good one." But, Sir, I go a step further. I show that by this provision you sow a seed of discord between the landlord and tenant. What is the practical effect of this legislation? It is this, that the landlord would naturally resent payment to him of a smaller rent than he is entitled to under the contract. The tenant on the other hand, even when his crops are good, under the advice of village

tout refuse to pay his just debts and take away the whole crop The landlord will go to court. As the crops are already cut, there is no tangible evidence as to what was the yield. There is hard swearing on both sides, from which it is difficult to find out the truth, and the court has to decide the case on his own surmises, for it is difficult to get reliable evidence as to how much crop yielded in a particular field in a particular year. This dispute between the landlord and the tenant continues from year to year. The lawyers are to be fed, the court *amlas*, from the process-server upwards, are to be pacified and both the tenants and landlords are ruined. Sir, in your solicitude for the welfare of the tenants, do not give them an indefinite law under which they will remain in constant feud with their landlords, for it is sure to cause the extinction of the tenants more often than of the landlords. Give them a simple law under which they may live in peace with their landlords, and may have as little chance of litigation with them as possible. I have already dealt with the question about payment of interest. There is no reason why the landlord should not have a return for the use of his money by the tenants. Then as regards three years' limitation, you think that this is for the benefit of the tenant. You think that the landlords, to increase their hold on the tenant, do not sue till their claim is very heavy and cannot be discharged by the tenant. This is your idea. My experience, however, is otherwise. There are very few landlords who allow their money to remain with the tenants in the hope of increasing their liabilities. All landlords are anxious to realize their dues at the proper time, and if they do not bring any suit at the end of each agricultural year, it is not to increase the liability of his tenants, but out of regard for the interest of the tenants and for fear of the expensive character of your law courts. Every landlord knows that when he has to go to court, he as a rule loses at least 30 per cent. of the principal money The transfer of jurisdiction from the civil court to the Collector may be of some benefit, but will not make appreciable difference in the costs. Nothing has been shown that the landlords of Orissa have misused the provision of three years' limitation. I strongly object to this innovation, both in the interest of landlords and in the interest of the tenant alike. Successive rent suits, year after year, should be discouraged and not encouraged. The explanation is also startling. The effect of this explanation is that, even if the tenant does not pay his rent in the proper time, the landlord will not get the price of the grains as prevalent at the time of payment but as prevalent at the time of the default of the tenants, and that without interest Instead of punishing the guilty party, the defaulter, you punish the landlord. One would have thought that the price should be calculated, either obtaining at the time of the harvest or at the time of payment whichever was to the advantage of the landlord. Sir, look at this clause from any point of view, it is exceedingly objectionable and I move that it be expunged altogether from this Bill."

THE HON'BLE MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN:—"I beg to support the amendment moved by the Hon'ble Rai Sheo Shankar Sahay Bahadur. The proposed amendment has been fully discussed, but I beg to submit, Sir, that it is purely an innovation, for if under a certain agreement between the landlord and the tenant, more than half the gross produce has hitherto been paid, there is no reason why this should be cut down. Of course, even in Behar, it has been generally found that what was payable over and above half the produce constituted Municipal cess commonly known as *abmáls*. Then again the landlords are not entitled to realize these arrears unless they go to court before the end of the agricultural year next following that for which the rent was claimed to be due. This is also a new provision. Why should you have such a legislation. Why should a landlord be forced to bring suit in so short a time? He may not be in a position to do so. There is already a period of three years in which the suit is to be brought, but here the period is cut down to one year. If the tenant chooses to pay the money within one year, the landlord will have no objection to receive it, so there is no reason why the period of limitation existing in the present law should not be adhered to. Then, again, the explanations added to the clause are similarly objectionable, as the Hon'ble Mover of the amendment has already pointed out. I need not take up the time of this Council by discussing all these points again.

But I should submit that this is enacting a new thing altogether which did not find its place in the existing law, this is apparently giving an undue advantage to the tenants, and giving the tenants an inducement to withhold the *Bhaoli* rent, as he will neither have to pay any interest, nor even the landlord's half share of the real produce, over and above that in cases of petty and poor landlords there will be the risk of limitation. With these observations, I support the amendment proposed by the Hon'ble Rai Sheo Shankar Sahay Bahadur.

THE HON'BLE MR. MCPHERSON said:—

"Sir, I oppose the amendment. The Hon'ble Member who has proposed this amendment, and the Hon'ble Member who has supported him, have been talking very much more from a Behar point of view than from an Orissa point of view. They have been keeping both eyes on Behar, and closing them entirely to the local conditions of Orissa. The provisions of the Bill on the subject of produce-rents must be considered together. They represent an arrangement which was regarded as fair and equitable by all Orissa landlords who were consulted, and they are in accordance with local custom. The one-half limit is the almost universal practice in Orissa, where the grain is divided, at the time of harvesting, in equal portions between the landlord and the tenant. There appears, therefore, to be no reasonable objection to our laying down one-half as the maximum share of the landlord. Then as regards the question of limitation. Grain rents are always collected, or ought always to be collected, on the spot when the crop is harvested That being so, there is no reason why we should allow the landlord to sue for this form of rent up to three years. We have reduced the period of limitation to one year In practice, this means that the suit need not be brought until at least one more harvest has been reaped by the raiyat. If, for any reason, the landlord has not received his share of the previous year's crop, then, if the year that follows is a prosperous year, the raiyat will be able to make good the previous year's deficit. There is no reason why the matter should be left over for three years. The ordinary period of limitation for a cash-rent is three years, and no hardship arises when a raiyat is sued at one time for three years' arrears, because the cash-rent rarely represents more than one-sixth of the produce, but in the case of a produce-rent it is entirely different, for if the raiyat is sued in the fourth year for arrears of rent, he will be sued, as a rule for one and-a-half times the produce of the year in which the suit is brought. What we want to do is to compel landlords and tenants to adjust their accounts, as regards produce-rents, at the time of harvest or as near as possible to the time of harvest. We do not want the account kept open until it is impossible for the raiyat to clear it. As I have already said, these proposals have been approved by the Orissa zamindars, and there is no reason why we should not accept them. We are not dealing now with Behar, where, in my experience, I have known cases in which as much as 27 seers out of every 40 is taken by landlords. We are not legislating for a state of affairs like that. We are legislating for people who are satisfied to follow an equitable arrangement, an arrangement whereby one half of the produce is taken as rent. I have so far said nothing about *sanja* rents, but I do not think it is necessary to make any special provision for them, or desirable to exclude them from the operation of the section. If the *sanja* be heavy rent, it should be discouraged If it be a small rent, say, one fourth of the average produce, then, the section will hardly ever apply to it. It will not apply to it unless you have less than an eight-anna crop, and that will not be often. It will perhaps be argued that as the raiyat gets off with a small proportion of his crop in a good year, the landlord should be allowed to realize the full *sanja* rent in a bad year, but we know that in actual practice when a very bad year occurs, and there is either no crop at all or only a four-anna crop, the full amount of the *sanja* is never exacted. No material hardship is inflicted on the landlord because the *sanja* rent has been included in these provisions. If the landlord does find that any hardship occurs, he has a very simple remedy. He has only to go into court under the provisions of clause 41 of the Bengal Tenancy Act and ask that a fair and equitable cash-rent be fixed instead of the *sanja* rent. With the rent so fixed he will be on the same footing as the landlord of an ordinary cash-paying tenant. He will be able to receive in full and to sue for arrears of three years.

The motion was then put and lost.

164. The Hon'ble Raja Rajendra Narayan Bhanjan Deo moved that the words "when the rent of any land is taken by appraisement or division of the produce, or partly in cash and partly in kind," be substituted for the words "where the rent of any land is paid in kind, or on the estimated value of a portion of the crop, or partly in one of those ways and partly in another or partly in one of those ways and partly in cash" in lines 1 to 4 of clause 7 (*1*).

He said:—

"Sir, both this amendment and No. 168 are just to exclude *sanja* from the operations of this clause, but as the Hon'ble Member in charge has already said he would not exclude *sanja*, I do not think there is any use in pressing this amendment, I would withdraw it.

The amendment was then, by leave of the President, withdrawn.

165. The Hon'ble Baby Hrishikesh Laha moved that the words "or any interest on such rent, or to recover any arrear of such rent by suit, unless the suit is instituted before the end of the agricultural year next following that for which the rent is claimed to be due," in line 7 to 10 of clause 71(*1*) be omitted.

He said:—

"The period of limitation fixed for the recovery of produce-rent, as fixed by sub-clause I of this clause, is only one year, whereas the period of limitation fixed for the recovery of money-rent is three years, though rent means 'whatever is lawfully payable or deliverable in money or in kind by a tenant to his landlord on account of the use or occupation of the land held by tenant" (see sub-clause 17 of clause 3 of the Bill). The reason assigned for the difference in the periods of limitation for the recovery of arrears of rent, paid in cash or in kind, in paragraph 3 of the Statement of Objects and Reasons, is "the landlord lets the lean years pass and waits for a fat one. He can easily prove condition of the crops just reaped, while evidence as to the previous crops is necessarily weaker, and he expects to induce the Court to decree the rent of all the three years at the same rate.' As I said in my note of dissent, the reason appears to be neither cogent nor founded upon any principle. It totally ignores the duty of a person to discharge his obligation, when under the law it is incumbent upon him to do so. If a tenant under the law is bound to pay his rent, either in money or kind, he must pay that rent without waiting for any demand from his landlord, and it is on this principle that the law awards interest or damage, when an arrear is found due from a tenant. Why should a landlord be taken to task when the tenant fails to discharge his legal obligation? If a tenant who pays produce-rent does not deliver the produce as it falls due, he must take the consequences of the law upon himself. The period of limitation, that is one year, which has been prescribed for the recovery of arrears of rent in kind with a view to benefit the tenant, would be harassing to the tenant himself, by reason of the fact that he is likely to lose the sympathy and kindness of the landlord, who, like most of the landlords in Orissa, is always ready to suit his convenience, and wait for the payment of the arrears due till a prosperous year. On the other hand, the landlords also would be harassed, by being compelled by law to institute suits against their tenants just after the rent has fallen due, while the cost of the suit would be very heavy, which the poor tenant will have to pay. No one, therefore, would be benefitted by this clause except the lawyers and the Government, as litigation would increase to an alarming extent, and the tenant would be at the mercy of pettifogging touts and muktears. This clause is also objectionable on the ground that *sanja* rent which is a fixed produce-rent, has been included in it, and no exception has been made in its favour."

THE HON'BLE MR. MCPHERSON said: "Sir, I oppose this amendment, for the reasons I have already given in discussing the previous amendment on the same section. I should like, however, to explain to the Council, by an example, what the meaning of the one year 'limitation' really is. Let us take a rice crop that has been cut in January of the present year 1912. Then, if the raiyat did not make that division of the crop that he ought to have made, on

the ground at harvest, an arrear falls due. The limitation provided in this clause gives the landlord until the 15th April of the year 1913 to put in his suit for arrears. He must put it in before the end of the agricultural year following that in which the rent became due. As the agricultural year ends about the middle of April, the landlord has thus about fifteen months in which to recover arrears of rice rents. He can thus afford to wait till the crops of the following year become ripe for harvest. We thus really give him two years and not one year. I would also remind the Council that the landlords of Orissa have the right of private distraint. If they do not collect their rents one year, they can distrain the next year's crops. In my opinion, we provide quite enough facility for the recovery of produce-rents, which should be recovered in the year in which the crops are grown, and not at some distant date."

The motion was then put and lost.

The following motion was, by leave of the President withdrawn :—

166. If motion No. 165 be carried, the Hon'ble Babu Hrishikesh Laha to move that clause 71 (3) be omitted.

167. The Hon'ble Mr. McPherson moved that the word "sub-section" be substituted for the word "section" in line one of the Explanation to clause 71 (*1*).

He said :—

"This is purely a verbal amendment."

The motion was put and agreed to

The following motions were, by leave of the President, withdrawn :—

168. If motion No. 164 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the following be added after clause 71 (*3*):—

"(*3*) Nothing in sub-section (*1*) or sub-section (*2*) shall apply to a produce-rent which is fixed in quantity. The landlord shall not be entitled to any interest on such rent."

Clause 76.

169. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that clause 76 be omitted.

170. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "unless and until the transfer has been duly registered as required by section 25A" in lines 4 and 5 of clause 76 be omitted.

Clause 78.

171. The Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 78 be omitted.

Clause 79.

172. The Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "or makes the land unfit for cultivation" be inserted after the words "landlord's property" in lines 3 and 4 of clause 79 (*5*).

Clause 82.

173. The Hon'ble Mr. Saiyid Wasi Ahmad moved that clause 82 be omitted.

He said :—

"Sir, I beg to move that clause 82 be omitted. Clause 82 runs thus: 'A non-occupancy raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission in writing.'

"Now this is a right that is going to be given to a non-occupancy raiyat, and apart from placing him on the land for the purpose of agriculture, he also gets a right to build a house for himself and also for the members of his family with all necessary out-offices. I do not know what out-offices a tenant may require—but from this section, if I take a concrete case of a non-occupancy raiyat who has just taken a settlement of, say, about two bighas of land, and it so happens, Sir, that he may have ten children, he goes to the landlord, and says, 'Look here, I want to build houses for myself and also for the members of my family,' and in this way he takes, say, about two or three cottahs of land for building purposes alone, and then he starts his cultivation: it is quite possible that that man may be ejected from the holding the very next year or the year after. Now the procedure adopted here is that the non-occupancy raiyat does not get only the right of building dwelling-houses for himself and the members of his family, but if he is ejected, he is entitled to receive compensation from the landlord for all the constructions and buildings that he may have made during his stay. Well, I submit that it will be very hard for a landlord if a raiyat is allowed to build a house, and after a short stay if he is ejected, the zamindar will have to pay compensation for his buildings. It may not work so hard in the case of permanent tenants or occupancy tenants, who always live on the land, but this is a case in which a non-occupancy raiyat is going to get this right, and I submit, Sir, that cases may arise in which it will result in this, that the tenant takes a settlement, he builds his houses there, and if after a year or two the landlord wishes to eject him he is obliged to pay compensation which ordinarily he would not like to do, and therefore practically he becomes a sort of settled raiyat of that land. Take another case in which a tenant gets a settlement of only ten bighas of land, and pays a rent of twenty rupees to the landlord, and if after one year the landlord is asked to pay compensation of Rs. 200, which he will not readily do, the result will be that in certain cases the landlord will be forced to allow the tenant to continue on that land. For these reasons I submit, Sir, that this clause be omitted.

The Hon'ble MR. KERR said :—

It is much to be regretted, Sir, that the framers of the Bengal Tenancy Act had not the advantage of the Hon'ble Member's legal acumen to assist them in their labours. But these labours were completed 27 years ago, and I would suggest to him that we really cannot go into all the fundamental principles which lie at the bottom of the tenancy law of the province. Apparently the word "out-offices" has frightened the Hon'ble Member, and brought to his mind the idea of carriage-houses, motor-houses, and things of that kind; but if the Hon'ble Member would go to any village and look at the non-occupancy raiyats' houses and surroundings, he will see that there is nothing to be alarmed at, even if the raiyat has ten children. His amendment would have the effect of depriving the non-occupancy raiyat of the right which he has at present to make irrigation wells, and to make a suitable dwelling-house for himself and his family. As a rule he is an extremely poor person, with a very small holding, and the Hon'ble Member need not be frightened that he will spend an extravagant sum on his well and on his house, so as to make it difficult for the landlord to pay compensation. I submit, Sir, there is no reason to alter the present provisions of the law which give non-occupancy raiyats this very small right; and if they were a more important class, I should say that they ought to be given greater privileges. As it is, they are a very small poor and unprosperous class, and there is no reason for curtailing such small privileges as they at present possess. I therefore oppose the amendment.

The motion was then put and lost.

Clause 83.

174. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "two years" be substituted for the words "twelve months" in line 2 of clause 83 (*3*).

He said :—

Sir, in clause 83 only 12 months are allowed to a landlord to register any improvements that might have been made. I think this period ought to be extended to two years as proposed, because these improvements ought to be encouraged by Government, and the landlords should not be debarred from the right of registration of any such improvements. So I propose, Sir, to substitute two years for twelve months in line 2 of clause 83 (*3*).

The Hon'ble Mr. Kerr said :—

I do not think there is any reasonable ground for this amendment. Under the section which we are considering a landlord who makes an improvement must apply within 12 months after it has been made for its registration, if he wants to use the improvement as a ground for enhancing the raiyat's rents. The Hon'ble Member would have this period extended to two years. Now it is very important in connection with improvements to get on record as early as possible facts which are necessary in order that they may be registered. Everybody knows that very soon after an improvement is made, doubts begin to arise whether it is an improvement, or whether it could possibly cost so much as the landlord says. Questions of this kind can only be decided if enquiry is taken up at a reasonably short period after the improvement has been made. To deal with those inquiries after a period of two years would very often frustrate the whole object of the registration of improvement. There is absolutely no reason why a landlord who has made an improvement should not apply for registration directly after he did so. He has made the improvement himself, and he knows its cost and all particulars about it. There is therefore no reason to allow him to delay for two years in applying for registration, and such delay could only result in imperfect information being registered and in giving unnecessary opportunities for disputes as to the facts which have to be registered. I therefore oppose this amendment.

The motion was then put and lost.

Clause 87.

The following motion was, by leave of the President, withdrawn :—

175. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or the proprietor of an estate" be inserted after the word "holding" in line 2 of clause 87 (*1*).

176. The Hon'ble Mr. M. S. Das moved that the words "or the proprietor of an estate" be inserted after the word "holding" in line 2 of clause 87(*1*).

He said :—

I do sincerely hope that the Hon'ble Member in charge will see the reasonableness of this proposal. The clause, as it stands, only covers the case of a tenure-holder when he is making an acquisition. But there might be cases where the proprietor wants to make an acquisition for public purposes, and it might be that the tenure-holder in an estate for instance the *mokadam* does not want to acquire. There might be cases where it is not to the interest of the tenure-holder to acquire. The proprietor cannot acquire a portion of a land belonging to his tenure-holder, though he by so doing can confer a benefit on the public. Therefore I hope that this amendment should be accepted by the Council.

The Hon'ble Mr. Kerr said :—

The effect of section 87 of the Bill is that raiyati land can only be acquired for public and semi-public purposes by the immediate landlord of

the holding. The Hon'ble Member's amendment would have the effect of enabling a superior proprietor to acquire land for this purpose. This would introduce a wholly unnecessary complication. If the proprietor divests himself of his interests in favour of a tenure-holder, he ought not to be allowed to come in during the currency of the tenure and to take away from a raiyat land which formed a part of the tenure when he took the lease. To allow a superior proprietor to come in like this would only cause troublesome confusion and dispute. A superior proprietor can very well wait until the term of the tenure is over before acquiring land for any of the purposes mentioned in the section. I must therefore resist the amendment.

The Hon'ble MR. DAS said :—

I must say that I fail to see the reasonableness of the argument advanced by the Hon'ble Mr. Kerr. He has told us that a superior landlord should not be allowed to acquire land which he let out to a tenure-holder during the currency of the tenure. But as a matter of fact we find that Government, the supremest of all, acquires land which belongs to its subjects for purposes of public utility. Suppose a road is to be constructed, and it lies along the whole length of an estate. The tenure-holder is a person whose tenure covers one-fourth of the estate. The proposal is that the road should run along the whole length of the estate; but the Hon'ble Mr. Kerr says that this should not be allowed. But if the Government wanted it for works of public utility, I do not think the Hon'ble Member would oppose it. I did not expect that amendments like this will be opposed. But I suppose any suggestion coming from a non-official member must be opposed.

The motion was then put and lost.

The following motions were, by leave of the President, withdrawn :—

177. If motion No. 175 be carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "or proprietor" be inserted after the word "landlord" in clause 87 wherever it occurs.

178. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the word "a" be substituted for the word "the" in line 3 of clause 87 (*1*).

179. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "for excavating a tank for the supply of drinking-water or" be inserted after the words "such as the use of the land" in lines 6 and 7 of clause 87 (*1*).

He said :—

It is very necessary to put in these words. Though it is said in the clause "for the good of the holding," still it is restricted by the words "for the village road and embankment." The Collector, when dealing with cases under this clause, might think that tanks are not included in this. Excavation of tanks are very necessary for drinking purposes. It may not always be for charitable or religious purposes, it may be for sanitation.

The Hon'ble MR. KERR said :—

I do not think that the words proposed by the Hon'ble Member are very necessary, because the excavation of a tank for the supply of drinking-water would in most parts of the country be treated as being for the good of the holding or tenure or estate in which the land is comprised, and the Bill already provides for works being undertaken for this purpose. If however the Council desires to have these words inserted, I see no harm, and I should be prepared to advise Government to accept this amendment. But the actual wording must be changed. It may be left to the Secretary to the Council.

The PRESIDENT said :—

The Hon'ble Member would do well to move his amendment on Saturday, in a form acceptable to the Hon'ble Member in charge.

The motion was accordingly postponed.

The following motions were, by leave of the President, withdrawn:—

180. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "for any such purpose" in line 10 of clause 87 (*1*) be omitted.

181. The Hon'ble Mr. M. S. Das to move that the words "and to the landlord when he is a tenure-holder or a raiyat" be added at the end of clause 17(*1*).

182. The Hon'ble Mr. M. S. Das to move that the words "or to the tenant and such tenant's landlord, as the case may be," be inserted after the word "tenant" in line 1 of clause 87(*2*).

Clause 90.

183. The Hon'ble Raja Rajendra Narayan Bhanja Deo moved that the words "in his own right" be inserted before the words "to cultivate his holding" in line 3 of clause 90 (*1*).

He said:—

The clause, as it stands, leaves ground for collusion with a view to defraud the zamindar. Many cases may arise where neither the transferor nor the transferee might pay rent, although the transferor holds the land of the transferee as an under-raiyat. The proposed amendment will be a penal provision to insure the property on the application for recognition of transfer. And this will prevent collusion between the transferor and the transferee.

The Hon'ble Mr. Kerr said:—

The object of this amendment is apparently to limit the rights of a raiyat to sub-let his land or to give a mortgage with possession. No reason has been given for this serious limitation of the powers of an occupancy raiyat. The effect would apparently be if any raiyat finds it inconvenient for a short period to cultivate his land himself or if a raiyat died and his widow could not cultivate the land herself, she would have to abandon it. This would obviously be very unfair, and there is no justification for this curtailment of the existing rights of the raiyat. I must therefore oppose this amendment.

The motion was then put and lost.

The following motion was, by leave of the President, withdrawn:—

184. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "for his own benefit" be inserted after the word "person" in line 4 of clause 90 (*1*).

185. The Hon'ble Mr. M. S. Das moved that the words "member of his family or by his under-raiyat" be substituted for the word "person" in line 4 of clause 90 (*1*).

He said:—

Sir, the clause, as it stands, leaves the zamindar in darkness as to the persons who should be employed for cultivating his land. All that my amendment seeks is to restrict the cultivation to the members of the raiyat's own family or his under-raiyat; so that this would not cover cases where there has been a collusion between the purchaser and the vendor. It is all right when members of a raiyat's own family cultivate the land. There is sure to be no dispute and no trying to defraud each other. That is the object of my amendment, and I do not like to take up the time of the Council any longer.

The Hon'ble Mr. Kerr said:—

Mr. Das's amendment does not go so far as that of Raja Rajendra Narayan Bhanja Deo, which has just been objected. Mr. Das would apparently allow sub-letting to an under-raiyat, but he would not recognise cases where a raiyat temporarily gave a mortgagee possession of his land or temporarily lent it to another person to cultivate it.

The Hon'ble Mr. Das said :—

I am willing to recognise mortgaged land.

The Hon'ble Mr. Kerr said :—

If we are going to deal with the matter in this way, we shall be kept he all day thinking of po sible cases which ought to be recognised. I do not thin this would be practicable.

The section as it stands is purposely wide so as not to interfere with th existing powers of the raiyat to dispose of his lands. I see no reason to narro it, or to impose any restrictions on the existing powers of raiyats, and therefore oppose this amendment

The motion was then put and lost.

186. The Hon'ble Mr. M. S. Das moved that clause 90 (*c*) be omitted.

He said :—

The sub-clause should be omitted, for this is practically unnecessary If a zamindar takes forcible possession of a holding, the raiyat can always go to the law court. This sub-clause pre-supposes a state of things which is very different from facts. It pre-supposes stringent relations between the landlord and his tenant which does not exist. It takes for granted that the zamindar is always trying to take possession of lands which belongs to the raiyat declaring them as abandoned, and therefore the zamindar should be called upon to serve a notice. Now take the case when there has been a flood or famine, and the raiyats have gone away from their holdings and the zamindar does not know whether they would return at all. It would be quite unnecessary for the zamindar to give notice to the Collector before he takes possession of such lands. I object to this sub-clause, simply on the ground that it supposes a state of things which does not exist at all. Legislation, as we have been told, should be based upon actual experience, and not upon hypothesis.

The Hon'ble Mr. Kerr said :—

This amendment of the Hon'ble Member would destroy a safeguard which was considered necessary in the Bengal Tenancy Act, and has been in force in Bengal for the last 27 years. Anybody who knows anything about the mufassal and the relations of many landlords with their tenants, will recognise at once that it would be extremely dangerous to allow landlords to treat a raiyat's holding as abandoned, without going through the formality of serving a notice through the Collector. It is really a safeguard for the landlord. Good landlords can by this means safeguard themselves from the risk of being treated as trespassers. This sub-clause is really in the interest both of the raiyats and landlords, and I would urge the Council to reject this amendment.

The Hon'ble Mr. Das said :—

I do not see what and whose interests are safeguarded. The matter now stand thus: If the zamindar takes forcible possession of another's land, he would be guilty of trespass under the Indian Penal Code. But if he serves a notice, then he is not liable to be prosecuted in a court for trespass. So really you are not safe-guarding anything. While you say you are helping the raiyat, you are not helping him at all; you are keeping a loophole open. The raiyat might as well say "save me from my friends.

The amendment was then put and lost.

The following motions were, by leave of the President, withdrawn :—

187. The Hon'ble Mr. M. S. Das to move that the words "from the date of publication of notice" in line 5 of clause 90 (*c*) be omitted.

Clause 91.

188. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "save as provided in sections 13A, 13B, 13C and 25A" in lines 1 and 2 of clause 91 be omitted.

189. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "save as provided in sub-section (2) of section 25A" in lines 3 and 4 of clause 11 be omitted.

Clause 91.

11A. The Hon'ble Mr. H. McPherson moved that, for clause 91, the following be substituted, namely:—

"91. A division of a tenure or holding, or distribution of the rent payable in respect thereto, shall not be binding on the landlord, unless it is made with his express consent in writing, or with that of his agent duly authorised in that behalf:

Division of tenancy not binding on landlord without his consent.

Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided, or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution."

He said:—

The amendment as printed in the separate paper has a slight mistake in it. In the second line the word "thereto" should be read as "thereof." This amendment is part of the arrangement come to regarding the transfer clauses and is merely a reproduction of section 88 of the Bengal Tenancy Act*

The motion was put in the altered form and agreed to.

The following motion was, by leave of the President, withdrawn:—

Clause 96.

190. The Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 96 be omitted.

191. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "the District Judge may on the application, in case (*a*), of the Collector, and, in case (*b*)," be substituted for the words "the Collector may of his own motion or on the application" in line 6 of clause 96.

He said:—

Sir, a change of considerable magnitude has been proposed to be made in the existing law with regard to the appointments of common managers It is proposed to transfer these cases from the jurisdiction of the District Judge; and High Court to that of the Collector and Commissioner. I admit this alteration is proposed with the best of motives. But I venture to think that a closer examination of the proposed change will convince Your Honour and the Council that it is of a far-reaching effect and should not be made. It affects the very existence of the landlords of joint estates and tenures. The first legislation on this subject was made in 1812, when by Regulation V of 1812, powers were given to Zilla Courts to appoint competent men to manage the property of joint undivided estates. To deprive a person of the right of the management of his property was a serious matter and could only be taken under very extraordinary circumstances and with proper safeguards. The safe guards in the law of 1812 were that action could only be taken in cases of disputes causing (1) inconvenience to the public, and (2) injury to

* i.e., Act VIII 1885.

private rights. The other and most important safe guard was that the jurisdiction vested in the Court of Zilla Judge, which could act only on the motion of Revenue authorities or any one interested in the estate itself, and not on his own power. This provision about the appointment of common managers was considerably enlarged when the Bengal Tenancy Act was passed, but no change of jurisdiction from the Judicial to the Executive was ever suggested, contemplated or made. The result has been that Zilla Judges under the superintendence of the Sudder Dewani Adawlut and High Court have exercised this jurisdiction for over one hundred years. It is now proposed in the present Bill that the jurisdiction should vest in the Collector under the superintendence of the Commissioner, and not in the District Judge and High Court as it had hitherto existed. I may say in passing that in this respect the condition of Orissa is on the same footing as that of other parts of the Provinces in Bengal and Bihar, and I do not think that it is maintained that Orissa so far as this matter is concerned should be treated differently from other parts of the province. I look on this proposed change with great alarm, and my fear is that a provision like this will place all the co-owners of estates and tenures in Orissa in a most dangerous position. It will lead to most disasterous consequences to them, and they and their property will incur the risk of being placed in charge of common management more often and more largely than is either good for them or for the country. Hitherto if any dispute existed between them and their co-owners causing inconvenience to the public, the Collector, and in case of injury to private rights, the person interested, had to move the District Judge, who after going through the matter may or may not appoint a common manager. In case he did appoint, the party aggrieved could come up to the High Court for redress. Now in Orissa the Collector will take the initiative and act as a Judge. If he hears from the Police or from the Settlement office or in a private conversation with any person or at the European club that there exists any dispute between co-owners not necessarily causing inconvenience to the public, but causing injury to private rights (which all disputes do), he can without waiting for a complaint from the aggrieved party at once take action and call upon them to appoint a common manager; and if they do not appoint a common manager, he himself can appoint a common manager, and thereupon the co-owners not only lose the management of their estate; but if the Bill is passed into law as it stands with the additions made therein, he cannot transfer or mortgage his rights or even apply for partition. If this section is passed as it stands, I sincerely pity the positions of all co-owners in this tract of the country from big zamindars down to holders of smallest tenure. They will be in constant dread of the Executive head of the district. They can at any time be deprived of the control of their property. It must not be supposed that I am saying anything against the Collectors, for whom as a body I have the greatest respect, regard and admiration. But, Sir, there is something which the lawyers call "judicial interest" or "judicial bias." Human nature is human nature and one of the elementary principles of jurisprudence is that you cannot be both prosecutor and judge. You set at naught the first principle of law, and make the Collector both prosecutor and judge. He can take action on his own motion in case of any dispute with which the public peace is not concerned, and he can decide the matter himself. It is placing in his hands a power which should never be placed in the hands of any person, however great confidence you may have in him. It is not only necessary that justice should be done, but it is absolutely necessary that the people should have no misgivings about the tribunal where they have to go to for justice. Then let us see what is the reason for the change. It is said that the Collector can keep better supervision over the managers than the District Judge can do. I admit that this is so. I admit that as rule management of estates cannot be properly supervised by the District Judge in the same way as by the Collector. You do not however propose to give him the supervision of management only, but you propose to give him the jurisdiction to take the initiative and to decide as a judge as to whether a common manager should be appointed. This difficulty of management by the District Judge has been felt before. We find it was felt so far back as 1827, for Regulation V of 1827 recognised that management by District Judge was less satisfactory than management by the

Collector. It therefore authorised the District Judge in case where he decided to appoint a manager to issue a precept to the Collector directing him to manage the property. This provision was replaced by a provision in the Bengal Tenancy Act, section 96, empowering the Local Government to nominate a person as manager for any area; and when the manager is so nominated, the District Judge should be bound to appoint him as common manager under the Tenancy Act If the question of management only is concerned, the difficulty might be obviated by the Local Government exercising the powers under this section But there is no reason why the power of taking the initiative should vest in the Collector. My last objection is that the matter has not been properly considered. I am aware that Mr. Adami, the District Judge of Cuttack, supports this provision, but he supports it simply on the ground of better supervision of management. He has not one word to say about the desirability or otherwise of adopting a line of action which would make the Collector both prosecutor and judge. Except Mr. Adami, no other District Judge has been, I believe, consulted, and above all the Hon'ble Judges of the High Court who have exercised the jurisdiction for over one hundred years have not been referred to. Is it fair to them; is it to say the least courteous on your part to oust them from their jurisdiction they have exercised for over 100 years without hearing from them as to what they have to say on the subject? When the effect of the Bill is properly understood, it is bound to create an alarm. I therefore propose that the present law need not be disturbed.

The Hon'ble BABU JANAKI NATH BOSE said:—

Sir,—This amendment has been very eloquently proposed, and the objections are on general grounds, but the change in the law that we propose is based upon actual experience. I can inform the Members of this Council that this system of managing certain estates through a common manager has been in vogue in the district of Cuttack for about 20 or 22 years. Of course, I find that the Judge who first took over the charge of one estate, rather liked the work. He took interest in that family whose estate came under his management. But then I am in a position to say that no other succeeding Judge ever liked this kind of work, and generally speaking there were several reasons for this—the first was that the Judge was busy with judicial work, and he had hardly any time to devote to the management of the estates; the second reason was that he had not the machinery at his command with which to work; and there was another reason, Sir, that these estates were generally embarrassed estates, and defaults were made in payment of Government revenue or the properties had been mortgaged or brought to sale in civil courts, and these things gave a considerable lot of trouble to the District Judge. He did not at all like either to write to the Collector to postpone the revenue sale or to write to the subordinate courts to adjourn execution sales Mr. Adami is no doubt emphatic in his opinion that he has not been able to work this system well, and it was preferable that the common manager should be under the Collector. I may also say, Sir, that at the Conference held in 1909 by Mr. Maddox most of the gentlemen consulted were in favour of the transfer of jurisdiction to the Collector. But the Hon'ble Member who proposes this amendment said that the Collector would be situated as a prosecutor and judge. I fail to see anything like that in this matter. On the other hand, if there was any inconvenience to the public or injury to the private rights, the Collector was in a better position to ascertain these than the District Judge, who would depend simply upon the evidence which may be produced before him; and I have noticed, Sir, that though the Collectors have many sins to atone for as regards their sympathies with the respectable people of the district or with the owners of embarrassed estates, I have always seen that the Collector was very sympathetic with the members of these ancient embarrassed families. Not only the Judge was of this opinion, but the local opinion was certainly the same. There is no harm in my telling the Council that Mr. Levinge, the present Commissioner, is also of opinion that the jurisdiction should be transferred to the Collector. There is also another reason that the common manager's accounts ought to be examined periodically at least. But I am sorry to say that though these estates had been under the management of the District Judge for several years, owing to the want of any qualified officers, the accounts

were never audited and no one knows how they stand. For this and other reasons it was thought fit to change the jurisdiction and place such estates under the Collector.

"As regards the curtailment of the power of co-sharers, I can also say from my experience that it is very necessary, for otherwise though all the co-sharers may think fit to place their estates in the hands of the Collector, some of them may change their minds afterwards, and by their conduct make the management impossible. For this and other reasons the change in the law is required, and I think except the general remarks already referred to there is nothing in the local conditions or experience actually gained by competent men which shows that this change in the law is not required.

The Council was adjourned to Saturday, the 23rd March 1912, at 11 A.M.

A. W. WATSON,

Offg. Secretary to the Bengal Legislative Council.

CALCUTTA,

The 27th March, 1912.

Abstract of the Proceedings of the Bengal Legislative Council, assembled under the provisions of the Indian Councils Acts, 1861, 1892 and 1909.

THE Council met in the Durbar Hall at Belvedere on Saturday, the 23rd March, 1912, at 11 A.M.

Present:

The Hon'ble SIR FREDERICK WILLIAM DUKE, K.C.I.E., C.S.I., Lieutenant-Governor of Bengal, sub. *pro tem.*, *presiding*.

The Hon'ble MR. F. A. SLACKE, C.S.I., *Vice-President*.

The Hon'ble RAJA KISORI LAL GOSWAMI.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR. D. J. MACPHERSON, C.I.E.

The Hon'ble MR. E. W. COLLIN.

The Hon'ble MR. C. J. STEVENSON-MOORE, C.V.O.

The Hon'ble MR. E. P. CHAPMAN.

The Hon'ble MR. B. K. FINNIMORE.

The Hon'ble MR. J. H. KERR, C.I.E.

The Hon'ble MR. H. L. STEPHENSON.

The Hon'ble MR. T. BUTLER.

The Hon'ble MR. S. L. MADDOX, C.S.I.

The Hon'ble MR. G. W. KÜCHLER, C.I.E.

The Hon'ble MR. L. F. MORSHEAD.

The Hon'ble SIR FREDERICK LOCH HALLIDAY, KT., M.V.O., C.I.E.

The Hon'ble MR. J. G. CUMMING, C.I.E.

The Hon'ble MR. C. H. BOMPAS.

The Hon'ble MR. C. E. A. W. OLDHAM.

The Hon'ble MR. H. MCPHERSON.

The Hon'ble BABU JANAKI NATH BOSE.

The Hon'ble MAHARAJA BAHADUR SIR PRODYOT KUMAR TAGORE, KT.

The Hon'ble SIR FREDERICK GEORGE DUMAYNE, KT.

The Hon'ble KUMAR SHEO NANDAN PRASAD SINGH.

The Hon'ble BABU BRIJENDRA NATH BASU.

The Hon'ble RAI SITA NATH RAI BAHADUR.

The Hon'ble LT.-COL. G. GRANT-GORDON, C.I.E.

The Hon'ble SIR BIJAY CHAND MAHTAB, K.C.S.I., K.C.I.E., I.O.M., Maharajadhiraja Bahadur of Burdwan.

The Hon'ble BABU KIRTANAND SINHA.

The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO.

The Hon'ble BABU DEBA PRASAD SARBADHIKARI.

The Hon'ble MR. J. G. APCAR.

The Hon'ble MR. NORMAN MCLEOD.

The Hon'ble MR. F. H. STEWART, C.I.E.

The Hon'ble MR. GOLAM HOSSEIN CASSIM ARIFF.

The Hon'ble DR. ABDULLAH-AL-MAMUN SUHRAWARDY.

The Hon'ble MR. SAIYID WASI AHMAD.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN.

The Hon'ble BABU HRISHIKESH LAHA.

The Hon'ble MAULVI SAIYID ZAHIR-UD-DIN.

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR.

The Hon'ble MR. MADHU SUDAN DAS, C.I.E.

The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR.

The Hon'ble BABU MAHENDRA NATH RAY.

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSAIN KHAN.

The Hon'ble MR. DIP NARAYAN SINGH.

The Hon'ble BABU BAL KRISHNA SAHAY.

THE ORISSA TENANCY BILL, 1912.

Clause 96—contd.

The Hon'ble Mr. McPherson:—

This amendment (No. 191) and the twenty which succeed it all relate to the provisions included in the Bill on the subject of common managers, and the main object of attack is the proposed transfer of jurisdiction from the District Judge to the Collector. The first point to note is that all the amendments have been proposed by Hon'ble Members from Bihar. There is not a single amendment suggested by any of the Hon'ble Members who represent Orissa, and it may be inferred that the provisions of the Bill have the entire approval of the latter. The proposed innovation in the law is not one which is being thrust upon an unwilling people by Government. It is an innovation which was sought by the people themselves, and Government was content to place itself in their hands and accede to their wishes. If Mr. Maddox's report of April 1909 be referred to, it will be seen that the zamindars, whom the Hon'ble Member has solemnly warned of the threatened invasion of their cherished rights of property, were themselves the first to suggest the change. They were dissatisfied with the working of the Bengal sections. Mr. Maddox translated their suggestion into proposals which were laid before the Orissa Committee of 1909. The Committee, with the exception of one common manager, who was also a pleader, one mukhtear and one zamindar, were strongly in favour of transferring the jurisdiction of the Judge to the Collector, "not only," I quote from Mr. Maddox's report, "because the Collector is familiar with the agricultural conditions of the district and controls all revenue matter (the area for the most part being temporarily settled), but also because he is more likely to appoint competent persons as managers and to supervise their work effectively."

The proposals which were incorporated in the Bill were circulated to the three associations who may be said to represent the landlord's interest in Orissa. Not only did all three associations approve of the proposals; they suggested that Government should go further in the direction of strengthening the hands of the common manager and curtailing the powers of the co-sharers during the term of management. They wanted Government in fact to introduce some of the provisions of the Chota Nagpur Encumbered Estates Act. Let me now read what the District Judge of Orissa wrote on the subject when the Bill was circulated to him:—

"The changes proposed in clauses 96 to 103 of the Bill are strongly to be advocated. There are at present six estates under common management under the District Judge of Cuttack, one of them being the Bhingapur estate, about the largest estate in Orissa. All, except one of these six estates, may be said to be *in extremis*.

"It is impossible for the District Judge, in the course of his duties, properly to supervise the common managers; he has no regular staff for the purpose and cannot afford the time to go out on tour.

"Furthermore, suits are constantly coming before him on appeal which, properly speaking, he should not hear, being in a way an interested party. Parts of the estates are constantly being put up for sale in execution of decrees, and it falls upon the District Judge to petition the subordinate courts to give time; at the same time he has to call for explanations from the lower courts for the delays in completing execution cases.

"The Collector can far better supervise the management, having experienced Deputy Collectors under him who can give the estates their individual attention.

"All the properties of the co-proprietors should be brought under the common manager. There has been difficulty, for instance, in selling off some house property of the proprietors of the Bhingapur estate in the towns of Puri and Cuttack. Such property is not at present covered by the Bengal Tenancy Act. I would suggest the inclusion, with necessary modifications, of the provision of sections 3, 10, 11, 17 and 18 of the Chota Nagpur Encumbered Estates Act, 1876."

The suggestions of the local associations and the District Judge were considered carefully in Select Committee. The Committee were unable to accept all the suggestions, because it is not the business of a Tenancy Act to provide for the preservation of Encumbered Estates. The details of clause 101 where they differ from those of section 98 of the Bengal Tenancy Act—and these also are the subject of attack by the Hon'ble Members from Bihar—represent the extent to which the Committee considered it safe in a Tenancy Act to admit the suggestions and accede to the wishes of the local associations.

We have now the very curious situation that when Government has embodied in a Bill provisions which are in compliance with the unanimous and urgent representations of the people of Orissa, the whole scheme is violently assailed by representatives of Bihar. Sir, it does not bode well for the newly strengthened connection between Bihar and Orissa that what may be called the senior partner in the new concern should adopt this attitude towards the junior member of the firm. I would ask the Hon'ble Members from Bihar to look at the question in this light and to abandon their opposition to this portion of the Bill.

The Hon'ble mover has laid much force on the point that the control of the working of common managers has hitherto rested with the Hon'ble High Court, and has endeavoured to excite us by holding up the new provisions to execration as an invasion of their ancient jurisdiction. But, Sir, in the management of disorganized estates of all kinds, there has always been close co-operation between the Judicial and the Executive. There has been no jealous rivalry. When we have shown that the existing system has not worked well in Orissa and that there is a universal desire to adopt instead management under the control of the Collector, no reasonable objection can be urged to the change. What the Hon'ble Member losses sight of or does not fully appreciate is the closeness of the connection which exists between an Orissa Collector and the landed interests of his district. The discussion indeed throws an interesting side-light on the difference that has been made to Orissa by the fact that its land settlements are temporary. The Collector is the trusted friend of the proprietary body, and the holy horror with which the Bihar Members regard these proposals is not intelligible to the people of Orissa.

There is one point, Sir, in the Hon'ble mover's remarks which has arrested my attention. He is afraid of the unlimited discretion that is conferred on the Collector to appoint common managers. It is no more unlimited, of course, than the discretion of the District Judge under the Bengal Act, for in this matter the District Judge exercises executive functions, and there is no appeal to the High Court against his orders; but he fears that the powers will be more extensively used by the Collector, who may act more frequently on his own initiative. Although the working of the provisions has been subjected to the revisional powers of the Commissioner by clause 102A, which has no counterpart in the Bengal Act, there is, I admit, some little danger that the provisions of the Bill may be overworked by an indiscreet or over-enthusiastic Collector. Government has no desire to throw unnecessary work on its mufassal officers. It is true that the successor of an officer who had overworked the sections might disencumber himself of the burden under section 102, but it is not always easy and not always satisfactory to get rid of a responsibility. I therefore propose, Sir, with your permission, to suggest that no appointment of a common manager under clause 98 or release of a property under clause 102 shall be made without the sanction of the Commissioner. The effect of these additions will be to steady the working of the provisions, by affording less play to the idiosyncracies of individual officers.

I propose to move the necessary amendments when the clauses in question come up for discussion.

The Hon'ble BABU BAIKUNTHA NATH SEN said:—

I rise, Sir, to support the amendment. Under the Bengal Tenancy Act the appointment of a common manager, his powers and duties, are provided in sections 93 to 100 of the Act. The District Judge has the right to appoint a common manager on the representation of the Collector under certain

circumstances, i.e., when there is inconvenience to the public, and on the representation of co-owners when there are injuries to private rights. The District Judge has the power of appointment, and the High Court has the power to make rules for the working of this chapter Now a departure is sought to be made, and the Collector-Magistrate is to take the initiative, and he can himself appoint a manager. The rules which are provided under the Bengal Tenancy Act, and which are to be framed by the High Court according to the provisions in the Bill, are to be framed by the Local Government, so that practically it comes to a question of the divesting of the jurisdiction of the District Judge and of the High Court, and of vesting the same jurisdiction in the Collector and in the Local Government. This departure, therefore, is a very important one; it affects the principle, it changes the forum, and unless a good and strong case is made out, the Council, I think, should not make a new departure. It has just now been observed by the Hon'ble Member in charge of the Bill, that the Orissa people do not object to that provision, but the Bihari Members have taken upon themselves to move the amendment. It does not matter much whether the amendment comes from the Bihari Members or from the Orissa Members; no doubt importance should be attached to the statement made by the Hon'ble Member just now that this measure would not be forced upon an unwilling people, as if the people of Orissa are willing to accept it. Suggestions by the local associations have been referred to, and they suggest that the powers should continue in the District Judge. It has further been observed by my hon'ble friend, Babu Janaki Nath Bose, that the District Judge is so much overworked in his judicial duties, that he cannot afford to give proper time to considerations of questions which arise and he has further observed that he has not the proper machinery which the Collector has. Now if the District Judge has not sufficient time, I think that the Collector-Magistrate, with his multifarious work, has got still less time. That is no ground. As regards the machinery I must speak from personal experience. There is one estate called Paikabaree estate, which is under the management of a common manager appointed by the District Judge of Murshidabad. The sheristadar of the Judge is a most competent person; he supervises the work, and the work is going on very satisfactorily. So that I am not prepared to admit that there is any force in the argument that the Judge has no time, that the Judge has no machinery, to supervise the work. Then comes the question as to why especially any large powers are intended to be given to the manager under the new Bill. Why should there be this divesting of authorities and powers from the judiciary and vesting it in the executive? Sir, I beg to submit, with every deference to the opinion which has just now been expressed by the Hon'ble Member in charge of the Bill, that the people—that the public at large—have the greatest confidence in the administration of the law by a judicial officer and ultimately by the High Court. They look upon actions taken for administrative purposes by the executive authorities with some degree of misapprehension; rightly or wrongly they do so. Here the co-owners have got vested interests, and I find from the provision made in clause 101 that the co-owners will not have the right without the sanction of the Collector to apply for partition even of the estates; that is depriving them of vested rights. When there is a common manager appointed a dissolution of the common management takes place *ipso facto* by a partition of these estates Now, under the Bengal Tenancy Act, a co-owner is not under any disabilities to apply for partition, nor is he bound to take the previous sanction of the District Judge or any one else; he can at once apply for a partition, and then the common manager disappears altogether. Now, a greater power is being sought to be given to the common manager, and when there is a common manager appointed a co-owner will not have the right to apply for partition without the sanction of the Collector; this places him under an enforced artificial disability; this deprives a vested right. For such enlarged powers, has a good case been made out for this departure? I need not enter into the reasons for the misapprehensions I do not say that every Collector or every Magistrate will act in a perverse way—far from that; but Magistrate-Collectors in their over-zeal, in consequence of mistakes connected with the appointment of the common manager, may take action which may result in a serious injury

to co-owners. I will take a simple case for illustration: Sir, suppose there are ten co sharers, and one of them dies, a dispute arises between the heirs of that particular co-owner—the nine co-owners have got nothing to do among themselves—but the heirs of the tenth co-owner fight among themselves, which brings inconvenience to the people or, in other words there is a likelihood of a breach of the peace. The whole property is brought under a common manager. It is certainly possible—it might take place - it might happen—if the Collector were trying in his own way to take up the case of the heirs of the tenth of the estate. I will not dilate on this point, because cases are conceivable in which this may be worked in an oppressive way. To avoid all these things, I submit that the law as it prevails in Bengal ought to be adopted, and, being a representative of the people, I must say with some degree of confidence, with due deference of course to the opinion of the Hon'ble Member in charge of the Bill, that this would be against the wishes of part-owners and against the wishes of the people. This will not be a popular measure. Government should certainly have consulted them before taking such a step by which vested rights will be interfered with, by which the jurisdiction of the District Judge and the High Court will be taken away, and such measure should be adopted with the greatest caution. I am aware of the fact that a provision has been made in this Bill for the revisional powers of the Commissioner. Under the existing law there is no right of appeal: a High Court, of course, could exercise its extraordinary jurisdiction of interference in special cases. No provision for appeal is made in any of the provisions, but the Commissioner has been given powers of revision, very likely to safeguard the interests of the co owners. I do not think that is sufficient, and I therefore support the amendment.

The Hon'ble SAIYID FAKHR-UD-DIN said :—

Sir, I rise to support the amendment, and I am very glad to find that this amendment is not only supported by the representatives of the people of Bihar, but also by the representatives of the people of Bengal. Of course, I do not know what the reasons are which led the representatives of the Orissa people not to put forward any amendments with regard to this clause, but we have here to look at the principle of law which we are going to enact. We ought not to judge the utility of the clause from the point of view as to who is proposing amendment, but the merits of the clause and the amendment should be dealt with independently of any such idea Such remarks and observations made by the Hon'ble Member in charge as regards almost every amendment proposed by Bihar members are quite out of place. Hitherto we had given jurisdiction to the District Judge for the appointment of a common manager with revisional jurisdiction invested in the High Court, and now a big change is proposed to be made in the existing law; the Collector is being vested with the power of appointing a common manager of his own motion even without any application on behalf of the co-owners. If he is satisfied that there is some inconvenience, or there is a likelihood of breach of the peace, he might appoint a common manager. Now this measure is no doubt very stringent, and it ought to be applied only in extreme cases and under exceptional circumstances; and hitherto in order to safeguard the misuse of this power, the District Judge was vested with the power of appointing a common manager on the application of a Collector, or even on the application of a private party. Now it is suggested that the District Judge had not sufficient machinery, and therefore it was difficult for him to look after the management We know that under the provisions of the Civil Procedure Code, the civil court has power to appoint a Receiver, and the Receiver has to manage the estates under the supervision of the Civil Judge; he has to submit his accounts to the Judge. And even if we assume that the machinery which the District Judge has got is not sufficient to look after the management of such undivided estates, of course we could provide him with sufficient staff and sufficient machinery, by which the District Judge could manage the estates efficiently, but there is no reason why these powers should be vested in the Collector who himself has got manifold business to look after. You do not propose to shorten the work of a Collector, but you make him to do other additional works. If you say that the Collector has got Deputy Collectors under him, he can efficiently work

through them. You can similarly empower a District Judge to employ subordinates—Munsifs—I think the District Judge in that case would be able to manage the estate more satisfactorily than the Collector. Then we find in the present clause of appointment of common managers' some stringent provisions have been made that the co-owners will not be entitled to sell, mortgage or lease any part of the property, nor will they be entitled to move the Collector or the Civil Courts for a partition of their share. Now when such stringent provisions have been made, it is but fair that the District Judge should exercise that power which hitherto he had enjoyed of appointing a common manager, as practically the Collector will for the time being confiscate this estate, and the co-owner will not be entitled to sell, mortgage, or lease his own share, nor will he be entitled to go before the Collector and ask for a division of his own lands, so that he may be free from all these difficulties. He can do these things only with the sanction of the Collector. I beg to submit, Sir, that, having regard to the stringent provisions which are now introduced in the subsequent clauses of this Bill, I think the existing law should not be changed, and that this power which was given to the District Judge should be retained. I notice in the reply given by the Hon'ble Member in charge that no explanation has been offered as to why the Hon'ble High Court was not consulted in this matter. Under the Bengal Tenancy Act we find that it was the High Court which framed this rule: now the High Court will have nothing to do under the new clauses of the Bill Is it fair that you take away the power of the High Court but you do not consult that body? The landlords will always be at the mercy of the Collector. If the Collector is displeased with any landlord, his estate will be confiscated under the garb of inconvenience to the public or private right under the provisions of this clause. He will not be under the control of the Civil Court. I am fully sure that this clause will arouse alarm in the minds of the landlords. With these few remarks, Sir, I beg to support this amendment

The Hon'ble BABU DEBA PRASAD SARBADHIKARI said :—

I wish to add, Sir, to the Bengal support for what it is worth I was not quite prepared for such a large and persistant promulgation of the opinion that whenever "territorial legislation," if one may so call it, comes up before this legislature or any other legislature, there is to be, at least, by implication also a sort of territ rial ear marking of support of the different sections composing the legislature That idea has been, earlier in the debate, properly combated in other concerns, and whatever application the idea may be conceded to have to matters of technique and details, it would be undesirable to extend it and emphasize it in connection with the larger questions of principle, such as are involved in this clause and in this amendment The matter has been discussed on the merits at some length, and it is not necessary for me to travel over the same ground that has been covered by other speakers. Reference has recently been made to the Receiver provisions of the Civil Procedure Code, and reference may be made to other law under wich the civil court has, under given conditions, power to interfere, whenever there is dispute of the kind contemplated in this clause. At present there is one, and only one, controlling authority with regard to these disputes, and that is the District Judiciary. Apart from the question of the High Court not having been consulted, apart also from the question of the powers of the law courts having been taken away, not by implication any longer, but overtly, without much of a case having been made out in support of such transfer of power, we have to consider some practical difficulties that are not only likely, but are sure, to arise, when there is dual authority of the kind proposed here against all procedure. I do not know, Sir, what will happen to the larger powers with which the common manager, or rather the Collector, is proposed to be vested. But supposing those powers are given to the Collector, and supposing there is a desire to avoid the exercise of those powers whenever there is a likelihood or chance of any of the contingencies contemplated in clause 97 arising, the more enterprising co-owner would straightaway rush to the Civil Court and put his suit on the file and ask for the appointment of a Receiver to the Civil Court and put his suit on the file and ask for the appointment of a Receiver, before anybody has the opportunity of thinking of a common manager. By this clause

no doubt the Collector is given the power of initiative together with those interested. Of course, as has been pointed out, it would be possible for an infinitesimally small owner to harass and annoy his co-owners by invoking the aid of this section. It would be equally possible, however, for him to go to the Civil Court and ask for the appointment of an official Receiver. Now it is possible that the appointment in many cases of a Receiver would not be a blessing after all, and the administration of an estate through a common manager may have advantages which the Receiver is not able to furnish. The average zamindar having disputes with his co-owners, has not largely availed himself of the opportunities of having a Receiver appointed, but has preferred the channel of a common manager. That has been acceptable and should we without complete justification or more than justification do anything that will make people think—having regard to the larger powers that I have alluded to—as to whether it would not be desirable to anticipate things much earlier than when the critical stage arises to move the Civil Court and get a Receiver appointed, and make it impossible for a common manager to intervene. A sort of perpetuity has been sought to be created later on by interfering with the powers of alienation and the rights of a partition which neither the Hindu legislature nor the British legislature had thought of interfering with so long. Having regard to these proposed extensive powers, there is the greatest likelihood of the powers of a Civil Court being invoked before time, than would otherwise be the case. It is difficult to follow the Hon'ble Member in charge of the Bill. If there is any opposition to any clause based on the existing Bengal Act, we are told that the law has done well enough for 27 years, why do you seek to interfere with it? The moment one seeks to go beyond the existing Bengal law, exception is taken that the Bengal law is no longer good enough, and reasons are found—and they can always be found when necessary—for making an advance on the Bengal law. We are not persuaded that anything like a clear case has been made out in support of the drastic and far-reaching innovation proposed in their clauses. Because Orissa representatives have not put this forward, it does not follow that they would not like to have, it if the others will take it up, and a fair and reasonable case we made out in favour of the amendment. The Bengal Members have exercised a self-restraint which has been conceded to be praiseworthy, by implication, by the Hon'ble Member in charge, in interfering as little with this Bill as possible. The grievance somewhere is that the Bengal Members have not taken enough interest in this Bill, and it is complained that those who support the retention of this Bill in this Council, have not taken enough interest in its progress. I wish to assure those who make a grievance of that kind, on behalf of myself and of the other Bengal Members of this Council, that it is not the interest that is lacking; but they do not wish to needlessly hamper the proceedings and waste the time of the Council by taking up ground which others have so well and very properly covered. But when a question of principle arises, I think it is desirable that Bengal should also make its voice heard and its opinion known, and make due contribution towards securing justice for Orissa even by forfeiting the hard earned praise for good conduct attributed to the Bengal Members in regard to their marked self-effacement in this debate.

The Hon'ble MR. MADDOX said:—

I only wish briefly to refer to what the Hon'ble Member in charge of the Bill has mentioned this morning, and that is about my report of April 1909. In that report I showed that it was clearly the wish of the people of Orissa to have these particular provisions, and the benefits to be secured by its provisions was also set forth. I need hardly remind the Members of this Council,—those who come from Bihar and Bengal and have spoken to-day—that the people whom they represent are not in such close touch with the Collector and the Deputy Collector to the same extent as the people of Orissa are, and therefore it is desirable that these provisions should be administered in Orissa by the Collector and Deputy Collector. Besides this the District Judge of Cuttack whose jurisdiction extends over Orissa has also recommended the adoption of these proposals.

The Hon'ble Mr. Syad Wasi Ahmad said:—

Day before yesterday I had an amendment No. 190 to this clause which was to the effect that the whole clause should be omitted. That amendment was withdrawn by me when I saw another amendment by my friend the Hon'ble Rai Sheo Shankar Sahay Bahadur, on the ground that I thought his amendment being milder in form and also in support of the present law, the Bengal Tenancy Act which, according to the view of the Hon'ble Member in charge of the Bill, has worked so satisfactorily for the last 27 years, would be accepted. I find to-day, however, that that amendment has also been opposed, and opposed rather strongly on a different ground altogether. The first ground put forward by the Hon'ble Member in charge of the Bill is that the Orissa Members, whom this clause particularly affects, have not said a word against these clauses, but on the other hand they have supported a change of this nature from the present law. I submit, Sir, this is absolutely no ground. As I said on the very first day of the discussion of this Bill, it is not a matter as to who speaks or who takes part in the discussion of a Bill in this Council. The whole thing is whether or not the Bill as placed before us and which we are asked to discuss and give our opinion upon is good law. That is the principle that ought to guide every Member in this hall, whether official or non-official. Now the changes that are proposed to be made by the introduction of this clause are of such a nature as to affect the very principles of the Bengal Tenancy Act inasmuch as this clause clearly changes the jurisdiction of a District Judge, and to hand it over to the District Collector. It is needless for me to remind Hon'ble Members of this Council, that there is already a cry against any power being vested in the executive officers. Under this Bill you have already given enough power to the Collector. You have practically made him—if you pass this Bill into law—the zamindar of his district. He may do what he likes; all the civil suits, all the rent suits, will be tried and decided by him. He will be directly in touch with the tenants, and will be directly in touch with the villagers, and naturally will also be in touch with the zamindars. I ask you to consider seriously whether the powers that are proposed to be given to him in this Bill as a whole will or will not make him an interested party whenever a question of this nature comes up before him.

Much has been said by the Hon'ble Member in charge of the Bill that difficulties have arisen in the case of District Judges when they have to apply as managers of the estates under their charge for postponements in cases pending before Subordinate Judges. The difficulties also have arisen because District Judges have to try civil suits in connection with the management of these very villages, but will these difficulties not arise in the case of District Magistrates, who will be, as I have said, the real zamindars of the whole district? Now, when you propose to make a change in the law, you have to first of all give a clear solid reason as to why that law should be changed. Two grounds have been given for his proposed change: the first is that a District Judge should be changed, and two grounds have been put forward in support of that view—one is that the District Judge is already an overworked officer and has no time; the second ground is that as he will be an interested party, it is not desirable that he should have the management of the estates. Not a word has been said or suggested either by the Hon'ble Member in charge of the Bill, or in the opinions that have been taken on this clause, that a District Judge cannot efficiently manage the estate, or that he is not capable of doing so. All that has been suggested is that he has no time, and I ask you whether it is reasonable to take away his powers, not because he is incapable of exercising it, but because he has not sufficient staff to work under him. If he has not a sufficient number of men under him, give him more men. What will be the result of this clause being passed into law? The estates will be managed by Deputy Collectors, and not by District Magistrates. You are giving power in effect to the Deputy Collectors who are already managers under the Court of Wards. I do not wish to suggest that these Deputy Collectors do not manage the Court of Wards well and satisfactorily. But a similar question may arise when you are going to overburden the Collectors with all sorts of powers, and cases are not wanting in which we know that various District Collectors have complained of overwork.

When they have plenty of work in hand, a similar complaint will arise. So I submit that it is absolutely no ground as to why the law should be changed. As to the District Judge being interested in the matter and therefore he should not exercise his power any longer, I submit that in nearly every case that comes under the Civil Procedure Code he is interested in very many things in which he has to sit as a Court of Appeal and decide cases. The principle thing is that you cannot change a law without giving any solid reason as to why the law should be changed, and when you know that not only the people of Orissa but the entire Council—I am talking of course of the non-official Members and the entire body of people whom they represent—certainly view this change with a great deal of alarm.

Then the next point has not been answered at all, and that is that we are also taking away the powers of the High Court. Why? What is the ground there? Has it been suggested that the High Court is also overworked in spite of our having 20 or 19 Judges? Absolutely no ground has been given as to why you are going to take away their power. You console us by saying that revisional power is given to the Commissioner. What is a Commissioner after all? He is the immediate superior of the Collector. That is all on the executive side of the administration, and we oppose this clause merely on that ground, and we say do anything you like but don't give too much power to the executive authorities in their districts when we have got District Judges and Civil Courts. Even my hon'ble friend from Bengal told us just now—and correctly too—that we have got a good deal of reliance in Civil Courts, and that everybody cries and shouts for a High Court. Even we, in the new Province of Bihar, are shouting for it. Why? Simply because we believe—we may be wrong—but we believe that we will have better justice done in the High Court than at the hands of a District Collector.

Then again there is one thing to be considered which the Hon'ble Member in charge of the Bill has very frankly admitted. There is also the chance of this power being abused by over-zealous Collectors. Cases are not wanting—I need not give you instances, but those who have been reading the papers for the last two or three years will tell you that there have been cases where the District Magistrates have gone beyond their powers at times by oppressing the zamindar—if I may be pardoned to say so. What will be the result of this? If the District Collector gets annoyed with a very petty zamindar, he will say "Oh, all right, on my own motion I will take away all the powers you have got. I will not let you enjoy your own property, and what is more, I will place it in my own hands." What is the remedy for that? Save and except certain powers given to a revisional Commissioner. He is in many cases guided by the notes and remarks of his subordinate officers. We don't expect any justice there, and therefore I submit that this law which is going to be introduced in this Council is certainly very strongly being opposed by everyone concerned.

There is one more point I wish to draw the attention of the Council to and that is this: The District Magistrate is vested with this power, and he is vested to such an extent that he can initiate proceedings of his own motion. Now what is the meaning of these words "of his own motion"? That requires an interpretation; but we know the meaning as interpreted in the Criminal Procedure Code; that is to say, he may also act on the reports of the police. Now, that is a very serious thing to consider. The District Collector sitting in his district receives various reports in the capacity of District Magistrate—both confidential and private reports from the police. If the District Magistrate takes the initiative on such reports and calls upon the co-sharer and says, "You better appoint a common manager, otherwise I will take charge of your entire property," I submit that would be very hard on the zamindars, in some cases at any rate. If there is any chance of the section not working satisfactorily in the case of zamindars, I submit that in itself is a very strong ground as to why the amendment should be accepted by this Council. I, therefore, beg to support this amendment that has been moved by my friend, the Hon'ble Rai Sheo Shankar Sahay.

The Hon'ble Mr. Das said:—

I did not intend to speak on this matter, but there has been something of crimination and recrimination as to what Orissa Members have charged other

Members with, and what should be the duty of Orissa Members. I must confess I did not give any particular attention to the study of this subject. When the matter was before the Select Committee, a proposal was made to incorporate in this Bill something like the encumbered estates provisions. I remember I objected to that. Then I have heard here that those people who have their estates now under a common manager wish a change, and I have also heard people say that they would like to have the thing in the hands of the Collector. So far it is correct. But I don't think anybody was consulted with regard to the provisions of the Bill as they stand. The discussion now before the Council has brought out certain features, features which I noticed at least in the speech of the Hon'ble Mr. McPherson and in the speech of the Hon'ble Member who has just resumed his seat. The Hon'ble Mr. McPherson said that he could imagine an over-energetic or some such word—Collector, and the last speaker pointed out what may be done by the Collector if the words "of his own motion" were left in the clause. These are matters in which I don't think the zamindars or persons who wish for the change were consulted. At any rate the discussion of this provision in the Bill has brought to light certain dangers. Hon'ble Members of the Council who have experience, more experience than I have, in connection with the working of this provision, have pointed out these. Though I am not in a position to speak from personal experience, I may say this much, that we are not prepared to oppose any reasonable amendment. All that we say is that any opinion formed by us is not to be adhered to as persistently as it is often done by an Hon'ble Member in charge of a Bill. Of course, Sir, we have been yoked with a senior partner which the Hon'ble Member, Mr. McPherson, has referred to; in taking a partner for life, one has to consult the wishes of such partner very often before they begin to live in the same house. Secondly, of course, the experience of the Bengali and Bihari are not to be thrown away and be slighted by the Orissa Members.

I regret really that I cannot offer any observation based on my personal experience, nor can I claim to have given any particular attention to this subject.

The Hon'ble MR. KERR said:—

I wish to say one thing with reference to the remarks that have fallen from the Hon'ble Member for the University regarding the Bengal Tenancy Act. The position of Government with regard to this matter is that we resist attacks on the principles of the Bengal Tenancy Act, and we say that in cases where that Act has worked well for many years a very strong case has to be made out in favour of any change. But this question which we are now considering is not a question of principle. It is simply a question of machinery as to whether these common manager provisions should be worked by the District Judge or by the Collector. There is moreover a strong case in favour of a change. The people of Orissa say that the existing machinery is not working well, and I may say here that the Hon'ble Mr. Das is wrong in thinking that this common manager provision was not circulated for opinion. It was first put forward by the Orissa people themselves in 1909, and the detailed provisions of the Bill were circulated to them some time in July or August and have been under consideration ever since. They were unanimously approved by the Orissa Association and the Orissa public. They have not, of course, seen the comparatively small amendments which were made in Select Committee, but I think we may take it that the Orissa public have approved the main principles which transfer this function from the District Judge to the Collector. The District Judge himself, who works this machinery at present, says that it is not suitable and wants a change. I submit, therefore, that in this comparatively small question of machinery we ought to be guided by the wishes of the local officers and the local people and carry the provisions of the Bill as they now are.

The Hon'ble MR. BHUPENDRA NATH BASU said:—

I will deal with the question that has been raised by the Hon'ble Member, Mr. Kerr, first. But before I do so I confess that if this section was not a section involving very important principles of administration, I should have

taken no part in the discussion, in view of the statement made by the Hon'ble Member in charge of the Bill that "the Orissa people want it." It is because I feel that there is a very serious question of principle involved in the clause that I venture to detain the Council for a few minutes. The Hon'ble Mr. Kerr says that it is a question of machinery. It is in one sense, but behind that question of machinery is the question of the hand that applies the machinery that sets the machinery in motion, and here we have the Collector himself setting the machinery in motion and then deciding for himself at a later stage as to whether the machinery should or should not be set in motion. To those Members of this Council who have spent their lives in district work I am afraid to appeal, because naturally they grow up under a belief that whatever they do is always right, but to others who have not had the benefit of that experience I can make a most strenuous appeal. Is it right or is it proper that the person who is ultimately to decide as to whether a common manager should or should not be appointed is the person who in the first place has to set the machinery in motion? That is a simple question to which I ask for a straightforward reply. I see arrayed against me gentlemen who have held high judicial offices, and one of whom we may congratulate upon being selected to fill one of the highest posts in my province. I appeal to them, not as a matter of experience with which I shall deal later on, but as a matter of principle to say whether they would give their high approval to a procedure of that kind. Then going away from the question of principle and coming to the applicability of the section, is it not quite clear that the experience we have had absolves us from all fear of any doubt of interference on the part of over-zealous district officer, but it may be that in Orissa a state of Arcadia exists, and that the happy relations existing there between executive officers and the people have not their counterpart elsewhere in the province, except probably on those carved images on Buddhist temples, where you see the lion and the lamb drinking water from the same vessel in peace and contentment. Put apart from that, it may very frequently happen that obnoxious zamindars may be sought to be put down by methods which will not stand the test of judicial procedure. Many of my friends, who have been district officials—I appeal to them—would say that often times they have found or they have felt that an obnoxious zamindar, from their point of view in any event, should have been dealt with, if possible, under the Court of Wards Act. In my own experience, a case did occur, where the zamindar was forced to seek the protection of Government, after a series of prosecutions by transferring his estates to the Court of Wards.

Under the law as you are going to frame it, wherever any dispute exists between co-owners, which is likely to cause inconvenience to the public or injury to private rights, the Collector can always interfere. I ask, Sir, the Bengal men, and in that I include the members of the Civil Service—as well as my non-official friends, that is men who have lived in the mufassal and who have experience of the management of zamindaris owned by several proprietors to say—can they point out to any single zamindari in the whole area of Bengal, Bihar and Orissa as they now are, where, owing to some disputes between the co-proprietors, some injury to private rights does not often happen, and thus open the door for the appointment of a common manager, and is it intended that the entire part of the Province of Orissa should be practically under the zamindari management of the Collector. Would he be able to look after such a big estate in addition to his other duties? But it may be said that it is a state of things which is not contemplated. What is contemplated is the potential power to interfere, and not the actual interference. But this potential power to interfere is a source of great danger. My friend, the Hon'ble Mr. Maddox, calls attention to his report where he says:—"Others ask for an amendment of sections 93 to 100 of the present Bengal Tenancy Act, so as to bring the procedure both for appointment and control of common managers entirely under the control of the Collector." That is one thing, but the provisions which you are seeking to introduce are quite different.

The Hon'ble MR. MADDOX said:—

May I explain, Sir, that they are detailed in a later paragraph of the same report, paragraph 30, sub-clause 14.

The Hon'ble BABU BHUPENDRA NATH BASU said :—

I have got that part also, and I will deal with it. This is what my friend says on page 57 of the report (the people of Orissa)—

> "except the common manager who is also a pleader," and thereby hangs a tale, "are in favour of transferring the jurisdiction from the Judge to the Collector. Not only because the Collector is familiar with the agricultural conditions and controls all revenue matters, but also because he is more likely to appoint competent persons as managers and supervise the work effectively."

That I concede. But I shall presently tell the Council that it is possible to secure this without the large departure that you are seeking to make from the existing law.

My friend, the Hon'ble Mr. Hugh McPherson, said, with some degree of appropriateness, that this is a matter in which the people of Orissa alone are concerned, and if they have no objection, why should others, the people from Bihar, especially, interfere? Well, this recalls to my mind a recent legislation in this Council, the Improvement Bill of Calcutta, and I should have been very pleased if the fight were left to us three on this side and the Hon'ble Mr. Bompas on the other, the rest of the Council abstaining from any discussion or voting; then I think we should not have come off in the plight in which we came off on that memorable occasion. But that is a state of things which is not possible in a corporate Council like the one that we have now got, and therefore I think it is right for Bihar Members as well as for ourselves to intervene in this discussion.

My friends are aware that there are provisions in the Code of Civil Procedure under which a property might be brought to sale by the District Judge through the agency of the Collector, and it was quite possible if there was a complaint, viz., that Judges had not got sufficient experience in the management of estates or the proper machinery under them, and that these things, the management of estates and supervision, would be better done by Collectors, it was quite easy to provide a machinery by which the Judges, after having given the order for the appointment of a common manager, were able to seek the help of the Collector in carrying out the part that is purely administrative, and which would not interfere with the judicial discretion of the Judge, or take away the powers of interference from the High Court. My friend says that he is going to give us the additional protection of the Commissioner. Far be it from me to say that it is not a protection. But I would appeal to my friend himself to say what is the extent of that protection. In how many instances and cases like these would the Commissioner be inclined to interfere, because your grounds are so vague, viz., inconvenience to the public or injury to private rights? If these two things are established, it is merely a matter of discretion and not of judicial exercise of power, and in how many cases would the Commissioner interfere? Then, Sir, it has been said that some of the Orissa zamindars wanted, if it was possible, to incorporate in the law some of the provisions of the Encumbered Estates Act for the protection of their estates. That is a feeling with which I can sympathise, but at the same time, as my friend knows, the provisions of the Encumbered Estates Act cannot be called into existence until the estate has become heavily encumbered. What happens—will my friend say—to an estate in which, take for instance, one proprietor is the owner of 15 annas? He is a thoroughly capable proprietor. Another is the owner of a one-anna share. In Bengal and Bihar there are owners of shares which are much more fractional than one anna, and because of this, it enables the Collector to interfere and appoint a common manager. This appointment of common manager by an executive order takes away entirely the right of the 15-anna share-holder of the management of his own estate, but that is not all. If that were all, I could understand that it was probably the policy of Government to reduce the zamindar, upon whose co-operation it has often relied, and whose absenteeism has always been marked, to the position of mere annuitants. But more than that, from reducing them, capable men who may have fractional shares in a zamindari, into a position of mere annuitants, you take away their power of sale, mortgage, gift or lease that they can in no way deal with any portion of their

property for any purpose whatever without the sanction of the Collector. My friend says, why should you fear that the Collector will unjustly withhold the sanction? I have not that fear: I take it that I need not fear. But why, because some fractional part of my estate has got into a state which would necessitate the appointment of a manager, should I be deprived of the ordinary rights of proprietors over my property, and why should I be compelled to seek the assistance of the Collector, and to be entirely dependant on his favour for the exercise of the commonest rights of property over my own state? And more than that; not only do you, by an executive order, impose upon me who may be a qualified proprietor to manage my own estates, this liability and deprive me of the rights of sale, gift or assignment, and further impose upon me this state of tutelage for all time until the Collector chooses otherwise. You take away from me the right to have my own share partitioned and given to me separately so that I can exercise the rights of management and of proprietorship over my own state. Is that fair? I do not know what the Orissa zamindars may think of it, but I am quite sure that in no other part of India, except the Sonthal Parganas, would any zamindars or proprietors of estates relinquish their rights to property under conditions like these, even if the Collector were a man who would be always infallible. This is a serious innovation and a serious encroachment upon the rights of private property, and I earnestly ask the Council to carefully consider what they are going to do, and then vote upon this amendment.

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR said :—

"Sir, we have heard in reply to several of our amendments that the people of Orissa have accepted this, and that there is no ground for the people of Bihar to intervene. Sir, the people of Orissa seem to be very gentle. But I do not know whether all the zamindars of Orissa, either of the permanently or temporarily settled estates, had in a body, for themselves, their heirs and their assigns, submitted an application to Your Honour that they wanted this change in the law for the appointment of a common manager. I do not think so. But assuming for the sake of argument that they have done so, shall we be deprived of the right of considering this question? Sir, I have heard of decrees by consent, but I have never heard until now of legislation by consent. In this case, a vital question of principle is involved, and the law as proposed to be introduced must stand or fall on its own merits. In considering the question of the appointment of common managers, there are three stages. The first is a stage of giving cognizance to the court in cases of dispute between the co-owners and the hearing of the dispute by that court. The second stage is when it is found that there is a dispute and a common manager should be appointed, the court issues a notice to the joint holders of the estate, whether a common manager should be appointed or not; and if the joint owners do not agree among themselves with regard to the appointment of a certain manager, the court can itself appoint a common manager. The third stage is when a common manager is appointed, the court has the control and supervision of the management of the common manager. The amendment before the Council, which I had the honour to move, refers to the first stage, viz., that the court has to take cognizance of the fact as to whether or not there is any dispute, such a dispute in which it is absolutely necessary that a person should be deprived of the right of management and a common manager should be appointed. My friends on the opposite Bench have rather complicated the issue by the introduction of the procedure of the second and third stages. They do not say that the Civil Court under the superintendence of the High Court should not have the jurisdiction of taking cognizance of a case and decide whether there is any dispute or not, or whether it is a fit case for the appointment of a common manager. What they say is this: that a District Judge cannot keep proper control over the common manager, and therefore the amendment in the law is necessary. As I said before, when moving this amendment, so far as I am personally concerned, although I know many are opposed to the views I entertain, I would have welcomed a motion to this effect that the power of taking cognizance and deciding whether a common manager should or should not be appointed should vest in the Civil Court, but

that the power of keeping control over the common manager might be given to the Collector. I should have personally no objection to that; but what I seriously object to is this, and this question is a serious one, as it is a question of depriving a man of his right of management—I object that this power of deciding whether there is a dispute and whether a person should be deprived of his right of management should be placed in the hands of the Collector, and the Civil Court and High Court should be divested of that right. I submit that this change in the law can only be defended if it has been proved that the Civil Court and the High Court have failed to exercise this power properly and have misused this power. Have we got any such case before us? Can you condemn the High Court without giving it an opportunity for explaining whether it has misused this power? Is that fair? These are my grievances, Sir, and they have not been answered by the Hon'ble Member in charge. I may say that, so far as this amendment is concerned, there cannot be any dispute that the power of taking cognizance and deciding whether a common manager should or should not be appointed should vest as heretofore in the Civil Court under the superintendence of the High Court. Has a case been made out that the Civil Court should be divested of this power, and that this power should now vest in the Collector?

A division was then taken with the following result :—

Ayes 17.	*Noes 25.*
The Hon'ble Kumar Sheo Nandan Prasad Singh.	The Hon'ble Mr. Slacke.
,, Babu Bhupendra Nath Basu.	,, Raja Kisori Lal Goswami.
,, ,, Kirtanand Sinha.	,, Mr. Greer.
,, Raja Rajendra Narayan Bhanja Deo.	,, ,, Macpherson.
,, Babu Deba Prasad Sarbadhikari.	,, ,, Collin.
,, Mr. Apear.	,, ,, Stevenson-Moore.
,, ,, Golam Hossain Cassim Ariff.	,, ,, Chapman.
,, Dr. Abdullah-al-Mamun Suhrawardy.	,, ,, Finnimore.
,, Mr. Saiyid Wasi Ahmad.	,, ,, Kerr.
,, Maulvi Saiyid Muhammad Fakhr-ud-din.	,, ,, Stephenson.
,, Babu Hrishikesh Laha.	,, ,, Butler.
,, Rai Sheo Shankar Sahay Bahadur.	,, ,, Maddox.
,, Mr. Das.	,, ,, Kuehler.
,, Rai Baikuntha Nath Sen Bahadur.	,, ,, Morshead.
,, Babu Mahendra Nath Ray.	,, Sir Frederick Loch Halliday, Kt.
,, Khan Bahadur Maulvi Sarfaraz Husain Khan.	,, Mr. Cumming.
,, Mr. Dip Narayan Singh.	,, ,, Bompas.
	,, ,, Oldham.
	,, ,, H. McPherson.
	,, Babu Janaki Nath Bose.
	,, Sir Frederick George Dumayne, Kt.
	,, Lt.-Col. G. Grant Gordon.
	,, Mr. Norman McLeod.
	,, ,, Stewart.
	,, Maulvi Saiyid Zahir-ud-din.

The following members were absent:—

The Hon'ble Mr. Mitra.
,, ,, Rai Sita Nath Ray Bahadur.
,, ,, Maharaja Manindra Chandra Nandi.
,, ,, Maharaj-Kumar Gopal Saran Narayan Singh.
,, ,, Mr. Dutt.
,, ,, ,, Reid.
,, ,, Babu Braj Kishor Prasad.
,, ,, ,, Bal Krishna Sahay.

The Hon'ble Maharaja Bahadur Sir Prodyot Kumar Tagore and the Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, abstained from voting.

The result of the division was *ayes* 17, *noes* 25, and the motion was therefore lost.

The following motions were, by leave of the President, withdrawn:—

192. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "or clause (*e*)" in the penultimate line of the provision to clause 96 be omitted.

Clause 97.

193. If motion No. 190 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 97 be omitted.

194. If motion No. 191 be carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "District Judge" be substituted for the word "Collector" in line 3 of clause 97.

Clause 98.

195. If motion No. 196 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 98 of the Bill be omitted.

196. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "has jurisdiction under the Court of Wards Act in force for the time being and" be inserted after the word "Wards" in line 3 of clause 98 (*a*).

He said:—

Sir, my ground for this amendment is that the Court under the Court of Wards has jurisdiction only if the property consists of an estate or part of an estate paying revenue to Government, and the Act does not confer jurisdiction on it to take charge of property consisting of tenures only. These sections in the Bill deal both with estates and tenures. In order to remove the anomaly, I propose the above words to be added, but I will not press for it if it is not accepted by the Hon'ble Member in charge of the Bill.

The Hon'ble MR. MCPHERSON said:—

I do not accept the amendment, Sir. There seems to be a similar provision in the Bengal Tenancy Act. The word "tenure" appears in section 97 of the Bengal Tenancy Act in much the same way as it appears here. Section 97 says:—

"In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immoveable property h all apply to the management."

The same reference to tenures occurs in section 95.

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR said:—

Sir, I do not wish to press this amendment.

The motion was then, by leave of the President, withdraw

The following motion was, by leave of the President, withdrawn:—

197. If motions Nos. 191 and 194 be carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "District Judge" be substituted for the word "Collector" in clause 98 wherever it occurs.

The Hon'ble MR. H. MCPHERSON said:—

Sir, may I have your permission to ask for the suspension of the Rules of Business to move an additional amendment?

The PRESIDENT said:—

Yes.

The Hon'ble MR. H. MCPHERSON said:—

I beg to move, Sir, that after the words "in any case" in sub-clause (*b*) of clause 98 the words "with the previous sanction of the Commissioner" be inserted.

The Hon'ble BABU BHUPENDRA NATH BASU said:—

I just want to know whether this would give the party a right of appeal to the Commissioner, or whether it would be only in the sense of a private communication between the Collector and the Commissioner.

The Hon'ble MR. H. MCPHERSON said:—

Sir, the case will have to be reported beforehand to the Commissioner and, no doubt, the Commissioner will be glad to hear what the parties have to say before he passes orders. We may trust the Collector and the Commissioner to do justice in this matter.

The Hon'ble BABU BHUPENDRA NATH BASU said:—

Would it not be simpler if the power of appeal were given to the parties to the Commissioner in the case of the appointment of a common manager, and as regards sales, gifts, etc.?

The Hon'ble MR. H. MCPHERSON said:—

There is also, Sir, the revisional power, and this, together with the additional words, secures our object. Knowing that the previous sanction of the Commissioner is necessary and that he has revisional powers under clause 102(*a*), the parties will, no doubt, go to the Commissioner and state their objections, if any.

The motion was put and agreed to.

The following motions were, by leave of the President, withdrawn:—

Clause 99.

198. If motion No. 190 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 99 of the Bill be omitted.

199. If motions Nos. 191 and 194 be carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "District Judge" be substituted for the word "Collector" in clause 99 wherever it occurs.

Clause 100.

200. If motion No. 199 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 100 of the Bill be omitted.

Clause 101.

201. If motion No. 193 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 101 be omitted.

202. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "in respect of all their joint immoveable property" in line 7 of clause 101 (*3*) be omitted.

He said—

These words are added by the Select Committee, and it is not clear what they mean. Do they mean that the common manager shall take charge of all the joint property? If so, it is exceedingly objectionable and inconsistent with section 96, where the existence of a dispute is a condition precedent for exercising this extraordinary jurisdiction of depriving a joint landlord of the control of his property. I submit that the Orissa people should not be treated

in this respect in a way different from other provinces, and we should not go beyond the Bengal Tenancy Act in this respect.

The Hon'ble MR. MCPHERSON said :—

This is one of the matters in which we placed ourselves in the hands of the local associations and representatives of Orissa. The clause as originally drafted was on the lines of the Bengal Tenancy Act. Several suggestions were made by the local associations and by the Members from Orissa to strengthen the hands of the common manager in dealing with joint properties of the people who came under management. It is one of the points in which we are asked to make an addition to the provisions of the Bengal Tenancy Act. As the addition has been made at the request of the Orissa people, I think it ought to stand.

The Hon'ble BABU JANAKI NATH BASU said :—

Sir, this change has been made in the law chiefly for this reason, that the common manager takes charge of the estates and other tenures belonging to the co-owners, but they may have some house property in the town which properly does not come under the category of an estate or a tenure; but the fact that the family possess such properties gives rise to various disputes amongst the co-sharers, and such disputes cannot be settled unless the common manager takes over the management of such property also. And there is another reason for this: If it is proposed to sell the houses in the town to liquidate the debts of the family, the common manager is not competent under the existing law to deal with such properties, and the owners themselves will not agree and will not execute a conveyance of these properties so that money may be raised and debts liquidated. These are the chief reasons for it, and this is a provision of the law which has been approved of by local opinion.

The motion was then put and lost.

The following motion was, by leave of the President, withdrawn:—

203. If motions Nos. 191 and 194 be carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "District Judge" be substituted for the word "Collector" in clause 101 wherever it occurs.

204. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "nor shall they, without the sanction of the Collector—

(*a*) by sale, mortgage, gift or lease, assign their share of the property, or

(*b*) apply for a partition of the estate or other property in the Civil Court or under the Estates Partition Act, 1877,"

in lines 9 to 14 of clause 101 (3) be omitted.

He said :—

This is another instance of departure from existing law. In the Statement of Objects and Reasons it is stated that opportunity is taken to revise the law as to managers in other respects also. Reference is made to decision of the High Court in the case of Amar Chandra Kundu, I. L. R., 31 Calc., page 305, and in consequence of that decision it is suggested that the powers of co-owners should be curtailed. I do not see how the power in the co-sharer to alienate his share can effect injuriously to his co-sharer landlords or to management by the common manager, or to the tenants of the estate, when the transferee simply steps into the shoes of the co-sharer who transferred his share and all he does is subject to what the common manager might have done in the due discharge of his duty. It is a serious matter to deprive a landlord not only of his right to manage the property, but to deprive him of the right to exercise his proprietary right. He is not an idiot, minor, insane or other disqualified proprietor enumerated in the Court of Wards Act. You step in,

not because he is unfit, but because he had the misfortune to have some dispute with his co-sharer. In such a case to treat him as a disqualified proprietor is most outrageous. Then the provision preventing him from applying for partition means that when he comes within the jurisdiction of the common manager, you do not wish that he should extricate himself from his jurisdiction. You wish that he should be deprived of his management and control for ever. Ordinarily where a co-owner loses control over his property in consequence of a dispute between him and his co-owner, the first and foremost honest thought that would suggest to him is that he would get his estate partitioned so that he may no longer be a co-owner and subject to the jurisdiction of the Court. You bar that remedy. You say, "you shall not get your estate partitioned, as that will lead to the courts losing jurisdiction over you." Surely in the name of enacting an agrarian law to govern the relationship of landlord and tenant you do not wish to pass a law of confiscation of property for these poor people. These provisions are introduced into the Bengal Tenancy Act as recommended by the Rent Commission, an extract of which is given by Sir Steuart Bayley at page 379 of the debate when opposing the motion of Hon'ble Raja Peary Mohan Mukerjee for omitting these clauses from the Bill, because to some extent they concern with the relationship of landlord and tenant; for the tenant is hampered and harassed if there is dispute between the co-owners, and he is interested in the appointment of a common manager. But so soon as a common manager is appointed, the object for which you include these provisions in the Tenancy Act is attained and you must stay your hands and can go no further. This is the principle recognised in the Bengal Tenancy Act. You are hardly justified to introduce the provisions of Chota Nagpur Encumbered Estates Act, or apply the provisions applicable to a disqualified proprietor under the Court of Wards Act with respect to persons who may be as competent as any of us here, and who has full power to deal with his property subject to the rights of his tenants or of his co owner. I submit we are treading on dangerous grounds, and it is safer to follow the Bengal Tenancy Act in this respect. My hon'ble friend is very anxious to give a right of transfer to tenants who never exercised it before, but by this provision he takes away the rights of the landlords to transfer his property which he has always exercised.

The Hon'ble BABU JANAKI NATH BOSE said:—

Sir, these provisions have been proposed entirely for the benefit of co-owners of estates in Orissa. In fact, Sir, I may submit that the Hon'ble Member in charge of this Bill accepted these proposals only when he was convinced that they would be beneficial to the co-owners themselves, and that they were wanted by the people who would particularly have recourse to this law. The present law, Sir, as we find it in the Bengal Tenancy Act, has been found defective in actual working. The Privy Council has held that all the co-owners together cannot deal with their property as long as the common management lasts, but each one of them can deal with his share, or alleged share, of the estate separately. The Council ought to remember that these families in Orissa are governed by the law of *Mitakshara*, and when the estate or estates are taken charge of by the common manager, these shares of individual co-owners are not known or ascertained. If each individual co-owner goes on mortgaging his share or portion of his share, and if suits are brought into court to which the other co-owners and the common manager are parties, the situation gives rise to a lot of litigation which is disadvantageous to the management of the estate. Then we come to the next stage; properties are actually sold, and outsiders become purchasers of fractional shares of such estates. If originally, Sir, there were three owners of the estate taken charge of by the common manager, in three years' time there may be three hundred such purchasers who would come under the common manager as co-owners of the estate. You can easily imagine, Sir, the disadvantages of such a position, and, in order to obviate such difficulties, the first clause was proposed and accepted by the Select Committee—"nor shall they, without the sanction of the Collector by sale, mortgage, gift, or lease, assign their share of the property."

Then supposing, Sir, a co-owner is possessed of one pie in an estate

try to put an end to the common management by suing in the Civil Court for a partition of the estate, or by applying to the Collector for partition of the estate under the Estates Partition Act, although the other co-owners are quite willing to keep the common management intact. To make such conduct impossible, so that one person owning a very small share in an estate will not be at liberty to do an injury to the other co-owners who are benefiting by the common management, that clause (*b*) was proposed to the Select Committee and was accepted. Now, these changes in the law were very carefully considered, and it was thought that if common management was at all feasible, such safeguards must be laid down so that common management might be effectual. My friend from Bihar has not had the experience of the actual difficulties of common management, and why these changes in the law are proposed, and therefore it is on theoretical grounds, Sir, that he is opposing this measure.

The Hon'ble MR. SAIYID WASI AHMAD said :—

Sir, as a similar amendment stands against my name (No. 205), I beg to support the motion that has been put forward by my friend, the Hon'ble Rai Sheo Shankar Sahay Bahadur. I have carefully heard my hon'ble friend the Member from Orissa, the Hon'ble Babu Janki Nath Bose, and the only ground on which he recommends this clause being passed by this Council is, that it is in the interests of the zamindars and for the good of the people of Orissa. I was waiting to hear from him whether the principle to deprive the right of a person is good in itself or not. Sir, the day before yesterday we had a good many discussions, more so from my friend opposite, the Hon'ble Mr. Das, when he appealed to this Council that it would be outrageous to deprive a tenant of his right to sell his land in case he may be in need of selling it to support his poor children. I make a similar appeal to the Members of this Council on behalf of not big zamindars, but of petty zamindars who are at times really and honestly forced to sell their properties in order to save themselves, their people and their families. What is the provision that you are making for them? As my friend the Hon'ble Rai Sheo Shankar Sahay Bahadur has said, it is not because a zamindar is unfit to manage his property that you slip in, but because he has the misfortune not to pull on well with one or two of his co-sharers. But suppose he is, after the appointment of common manager, forced, on account of certain circumstances that may befall any person, to sell not the whole, but any portion of his property, why should you oppose that? What is the theory, therefore, why a man, after having this right proprietary right—over his own property, should be deprived of the power to deal with it in any manner he pleases, especially when he is in no way at fault. Well, Sir, I do not know with what object a change of this nature has been introduced into this Bill, but it appears to me that the introduction of the clause itself is out of order, if I may be permitted to say so, because it does not contemplate to provide a law to govern the landlords and tenants. This particular section enacts for certain action to be taken in connection with two fighting zamindars Well, surely a Tenancy Act or a Tenancy Bill should not aim at a law that governs only zamindars and does not in any manner interest or affect a tenant. Have you made out a case that tenants are either directly or indirectly affected by means of this clause? If the tenants are not to suffer, then I do not see why a clause like this should be incorporated in this Bill? Then, again, look at the hardships upon some of the poor zamindars, petty zamindars, and I tell this Council from my own personal experience of Bihar—and I certainly think that cases in Orissa will not be wanting in this respect—when a dispute arises between one or two members of the same family holding joint-property, whether governed by *Mitakshara* law or Muhammadan law, it does not matter. What is the best way of avoiding that dispute? What does he do? The best way of avoiding that dispute is to apply for partition and be finished with so far as that particular person is concerned; and you are going to take away even the right of partition of the estate from that zamindar. I submit that absolutely no ground has been put forward, even by my hon'ble friend Babu Janaki Nath Bose, in support of such an enactment. I do not see why this right should be taken away from the zamindars if a common manager has to be appointed. Then,

again, if you do not permit the partition, practically it will be like this, that the zamindar will have absolutely no hand in the management of his zamindari; he cannot really derive any benefit or any advantage of any sort from his own property; and it will be simply disastrous for the petty zamindars to have any such enactment. The argument has been advanced that the Orissa people are content; but my friend forgets that now Orissa is a part of Bihar; and we Biharees have as much interest in the welfare of Orissa as the people of Orissa themselves. What will be our fate, then, apart from our interests in Bihar? Supposing such people go to Orissa because it is part and parcel of Bihar and intend purchasing properties there, the operations of this clause will affect them seriously and very materially. I submit there is absolutely no argument in support of this clause. With these few words I support the amendment of my hon'ble friend, Rai Sheo Shankar Sahay Bahadur.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"Sir, hitherto my impression has been that the provision for the appointment of a common manager, existing either in the Bengal Tenancy Act or proposed to be enacted in the present Orissa Tenancy Bill, was for the protection of the interests of the tenants, and to safeguard the interests of the landlord and the tenants in the questions arising between landlords and tenants themselves. But it appears that these two clauses have been chiefly incorporated in this Bill for the protection of the interests of the landlords and landlords alone. Now in this Tenancy Bill we would have expected only those provisions which would have safeguarded the interests of the tenants and the landlords in a certain dispute arising between landlords and tenants, but then these two clauses provide something else. Now my friend, the Hon'ble Babu Janaki Nath Bose, tells us that these two provisions were accepted by the Hon'ble Member in charge of the Bill on the application of the local zamindars. It appears that the zamindars of Orissa are very convenient people. They have got inherent rights they can sell, mortgage or lease away their properties; they can make an application for the partition of their shares. If they want that these natural and inherent rights which they possessed should be taken away from them and should be made dependent upon the mercy of the Collector, I can only say that these landlords of Orissa are fortunate. It would have been rather very good for these Orissa zamindars to make an application for the partition of their shares either in the Civil Court or in the Collectorate, and thereby all the disputes could have been avoided. But it is said that even these inherent rights they did not like to possess; they did not like to exercise those inherent and natural rights without the previous sanction of the Collector. Now I submit, Sir, even if any co-owner were to sell or mortgage or partition his share in the property, such transfers would not affect in the least the management of the estate by a common manager or by the Collector. The management would have to be continued irrespective of any transfers, any leases, any assignments, any gifts. No doubt the partition would go to affect the management by a common manager, because one share may be divided and the lands be separated, and so far as that portion of the land is concerned that may or may not be under the common manager. But then I submit that why should a restriction or limitation be imposed upon the inherent and natural rights which the zamindars of Orissa do possess? My friend the Hon'ble Babu Janaki Nath Bose has put forward the case of a *Mitakshara* family; but then I put it in a different way, supposing in the one estate there are two Muhammadan zamindars and two Hindu zamindars of different families, and one of the Hindu zamindars dies, and there is a dispute amongst his heirs. Now, why should the other three persons be deprived of their natural and inherent rights of mortgaging, selling, assigning their share or asking the Collector to partition their share. There is a dispute as regards a fraction of the sixteen-anna property. Now, so far as that fraction is concerned, the estate may be confiscated or kept under management; but why should the other co-sharers be deprived of their inherent rights? That is where I fail to see any reason, and there was no provision under the Bengal Tenancy Act, and I do not think, Sir, that it

would be fair in principle to incorporate these clauses in the section, because that would be very hard on the zamindars of Orissa. Of course I have got no personal experience of Orissa. My friend, the Hon'ble Babu Janaki Nath Bose, is perfectly right that the Bihar members have got no personal experience of the conditions of Orissa. Of course I am prepared to accept that, but I fail to see the reasonableness of these zamindars of Orissa making an application to cut away their rights or to put some restrictions and limitations upon their own natural and inherent rights. Assuming that some landlords of Orissa might have indiscreetly made such applications, but I am anxious to know the soundness of the principle; we are fighting on principle. Instead of enacting law to define the relationship between landlord and tenant, you are enacting the provisions of Chota Nagpur Encumbered Estates Act in this Bill. If the Orissa landlords are anxious for reasons known to them to have a curtailment of their powers and rights enact some other law for that. With these few words I beg to support the motion."

The Hon'ble BABU MAHENDRA NATH RAY said :—

"Sir, I beg to support this amendment, which attempts to do away with a most revolutionary clause of the Bill, and a clause which I submit is most dangerous; and I hope before this matter is finally considered, and this amendment is either accepted or rejected, this Council will consider the very serious question which this clause, or rather the addition to the clause and the amendment raised. To a lawyer such a provision as would have the effect of depriving a co-sharer of all rights of property simply because the property has been placed under the charge of a common manager, would be opposed to all principles of jurisprudence, opposed to all well known principles of law. It is impossible to connect or to find out any connection between the interests of common management and this taking away from a co-owner of a property under common management the rudimentary elements of rights of property. I find, Sir, from the fact that part of the clause is underlined, that it is one of the amendments, rather one of the improvements or additions made to the Bill, during the course of its passage through the Select Committee; and when I look to the report of the Select Committee with a view to see whether any explanation of this most extraordinary provision is suggested, I find it stated at page 5 of the report that "we have modified the provisions of clause 101, so as to strengthen the hands of the common manager and prevent mischievous interference by co-sharers with the object of management." I was startled to find, Sir, that this reason is given seriously by the Select Committee for this most revolutionary change. It is impossible to see how the taking away of the elementary rights of property from the co-sharer of a property placed under common management will make it impossible for co-sharers to mischievously interfere with the common management, or how it will strengthen the hands of the common manager. I am afraid, Sir, that when that part of the report of the Select Committee was drafted, the very drastic change made was evidently lost sight of, and the explanation given at page 5 cannot possibly refer to this most revolutionary change. I find the three hon'ble gentlemen who represented Orissa in the Select Committee have nothing to say about this most extraordinary clause, in two of the notes of dissent which were put before us to read. If this means, as has been suggested by the Hon'ble Babu Janaki Nath Bose, that the zamindars of Orissa are perfectly content to keep in suspense all their proprietary rights during the indefinite period of the tenure of a joint manager—because I must say there is absolutely no limit to the length of time during which the common manager may hold his appointment—that if the zamindars of Orissa really desire that during this indefinite period all their rights of property should be kept in suspense, we may be surprised at the idea, but a sane legislature can certainly not support that idea and give effect to a clause like this

"It does not require any serious argument to point out the fallacy of this position. This Bill nowhere says it is to apply to Mitakshara families, but it would apply to all families and to all co-owners who would be found to have property within the limits of the Orissa Division, and within the limits of the Orissa Division there may be some—there are families—which are not

wholly governed by the Mitakshara laws. I shall ask the Council for a moment to imagine what would be the possible effect of this clause being carried and made law? A joint manager is appointed with a view that such an appointment would avoid any inconvenience to the public or injury to private interests. The joint manager takes charge of the common estate, relieves the co-owners of the management with a view to avoid inconvenience to the public or injury to private interests, and this state of things is continued until the Collector is of opinion that this managership can be abolished without any inconvenience to the public or injury to private interests. The state of things may go on for a long time—it may go on for 40 years or 30 years, and during all this time the person who has a substantial share in the joint estate is not to deal with it as owner of that estate, but has, I suppose, to be relegated to the class of pensioners, and he gets an annual allowance or a monthly allowance, or some allowance from the common manages. During all these years his rights of ownership are suspended. He cannot sell, and, if he is about to die, he cannot make a bequest in favour of any person. He cannot, even if he has a desire to put an end to all disputes by partitioning the property and getting his share separated from the rest, be allowed to do that. Why? We have been told that this is for the benefit of the Orissa zamindars. I do not know what is the idea which Orissa zamindars have of benefiting themselves. If the Orissa zamindars think that for an indefinite period of time it would be a benefit to them to extinguish their rights and to be placed on a pension under the direction of the Collector and in the Collector's list and to be supplied by the pension periodically, they may be welcome to that, but it is an idea which we cannot endorse.

"I submit it is one of the most revolutionary measures for which there is absolutely no justification, and I hope, Sir, that the Council will adopt this amendment and reject this dangerous innovation in the Bill."

The Hon'ble RAJA RAJENDRA NARAIN BHANJA DEO said:—

"Sir, with regard to the Orissa zamindars, it has been discussed whether the estate ought to go under the management of the Collector or a Judge. There might be some difference of opinion on that, but I do not think, Sir, there can be any difference of opinion about omitting these two sub clauses. I do not know which zamindars of Orissa have actually approached Government to put in this clause, and I shall be obliged if I am enlightened on the subject. But certainly, Sir, these two are very mischievous clauses in the Bill, and I support the amendment. I believe there is a proposal for the partition of Bhingarpur, a large estate in Orissa. The question is pending before the Judge. If the amendment is not accepted, I fear the present provision will interfere with the proposal for partition."

The Hon'ble BABU BAIKUNTA NATH SEN said:—

"I need add only a few words in support of this amendment. Vested interests cannot be divested is an axiomatic principle and that would be the effect if this Council adopts the measure. There is no doubt that all the owners have power to sell, mortgage, give away, or lease away their property, and restriction on that is sought to be put by this sub-clause A (*iii*).

"Now, it is well known to every one that most of the zamindar class live from hand-to-mouth, and they have on occasions of extraordinary expenses to incur debt and then by economy to pay off that debt gradually. For instance, death of a parent in the family necessitates the *shradh* ceremony which the son is in duty bound to perform, in the same way Hindu families in the occasions of marriages of daughters have to incur extraordinary expenses, and for these ceremonies they have to borrow money or sometimes sell away a portion of their property. Under this innovation they would be precluded from doing that and they would be put to very great inconvenience. On the other hand, the management is not in the least interfered with, if a man borrows money by mortgaging his share of the property. The management goes on as before, and the co-owner gradually pays up his debt or, if he sells his property, the purchaser will be in the same position because he stands in his shoes. The management is not interfered with, and he only

gets the profits which the vendor was getting. As regards a gift, this clause has a far-reaching effect. It interferes, I beg to assert confidently, with the general testamentary powers of co-owners. A gift may be a gift *inter vivos* or a prospective one after one's death. If a co-owner wishes to make a disposition by diverting a course of inheritance, he will be prevented from doing it. That is a right which will be affected by this provision. It has been observed by my Hon'ble friend, Mr. Janaki Nath Bose, that the co-owners concerned are governed by the Mitakshara law. I am not in a position to contradict him. Assuming that there must be some cases in which zamindars have acquired properties over which they have right to control the devolution of property by testamentary disposition. What will be the effect of this new legislation? It will have a far-reaching effect of a dangerous and revolutionary character which no Council ought to countenance.

"Then, with regard to the second clause (B) 'partition.' According to the original clause 96 (inconvenience to the public), is a ground for the appointment of a common manager. In the case of a partition there will not exist such inconvenience. If there is a partition effected, each party enjoys the property separately and there will be no inconvenience to the public. It has been said by my friend that the majority of co-owners like the common manager to continue but one of them is a wicked and mischievous man and he applies for partition for his own purpose; in that case the majority can, if they like, keep the common management by consenting to the partition to the extent of the share of the party applying for partition: the other portion of the estate may remain intact. My friend to the left has drawn the attention of the Council to the reasons given in the report by the Select Committee as regards the provisions. The fallacy of the reason is apparent. The common management will not be interferred with, and this improvement, which is sought to be made by the Select Committee, goes to make a provision of a dangerous character.

"I submit, therefore, that this Council, before it gives its sanction to allow the provision to remain in the Statute book, should consider whether it should deliberately ignore the first principles of law and bring about a revolution; and whether it would interfere even with the testamentary powers."

The Hon'ble BABU DEBA PRASAD SARBADHIKARI said:—

"Sir, I claim that this is more than a mere 'matter of machinery,' and I hope after what has been said that it will be conceded that it is a very serious matter of principle which is involved in this case.

"We are not here to legislate for the benefit of enterprising Bihar investors who threaten that they will buy property in Orissa. I suppose Orissa will be able to take care of itself, and when the Bihar investor goes into the market he will find advantages and disadvantages counterbalance one another. But the anxiety of the Uriya who, according to my friend, Mr. Madhusudan Das, is not always able to take care of himself, is that step-motherly solicitude for its welfare was being carried further than any legislature or law court ever thought of. We are aware that in recent times, in the Punjab for example and other parts of the country, discount has been sought to be put on land alienation. That was an attempt, however, of a far narrower kind than is boldly attempted in this uncommon clause. We in this legislature thought that we were legislating for the ordinary interests which govern the relations between tenant and landlord in the ordinary spheres of life: but to attempt to divert the course of law in a way that this section seeks to do is an unheard-of thing, and if this legislature were to lend itself to it, it would be opening up enormous difficulties. Sir, the anxiety of the majority of co-owners to keep property together at the expense of inconveniencing a one-pice owner is not at all an exclusive monopoly in Orissa. In other parts of the country amiable heads of families are anxious that recalcitrant co owners owning half-pice or a pice share of the estate should not embarrass a family by going away and seeking partition. When such an owner has come to the law court, the law court never said, 'You shall not get your partition because you are such an infinitesimal owner . . . ." To minimise the evils of such situations the legislature in its wisdom has enacted various relieving measures; for example, if the majority

of owners desire that their property should not be partitioned by metes and bounds under certain circumstances, it can be put up for sale. Reliefs of that kind the legislature has tolerated, and I have no doubt under proper conditions will tolerate to a larger degree; but to say that because of unfortunate incidents a common manager has been appointed, a man's property should be tied up in a method of perpetuity foreign to the spirit of our law and legislation is a matter which the law courts and legislatures have always discountenanced, and to put it in its kindest way, such a thing is unheard of. We, here, by a short clause, are to introduce measures that is entirely alien to the spirit of the law of perpetuity. The Bengal school was in advance of the *Mitakshara* school in matters of partition, and now that the Bengal and Mitakshara governed countries are to be separated, there seems to be in the air a subtle and far-reaching sort of reasoning by which the old school is to return to power where its authority is on the wane.

When the representatives of Orissa tell us that we have no experience about their internal conditions and that we have no business to speak of these matters, we feel ourselves situated somewhat like those placed between the deep sea and a well-known but rarely mentioned personage. And complaint is not lacking if there be want of seasonable interference by Bengal Members. Sir, the Hon'ble Mr. Madhusudan Das has complained with regard to one of the Members of the Select Committee, that he had never been near Orissa and knew nothing of the place. That complaint does not apply to many of us, and certainly not to me. Many witnesses here will bear testimony that I have not only been to Orissa but know the place. My ancestors came from there and I take a lively interest in all matters appertaining to that province and hope to do so for all time in spite of being separated from it, for Orissa has special and unique attractions for me. We seek to interfere when it is our duty to do so and because we all take great interest in that classic land. The Hon'ble the Raja of Kanika has said nothing to show that these fundamental changes in the law of the country with regard to ordinary landholders is required and we shall await the pronouncement of the other Orissa representative as to whether such a change is necessary for I find a difficulty in accepting in its entirety the doubtful dictum of the Hon'ble Babu Janaki Nath Bose in his latter day *Vijnaneswar* vein.

The Hon'ble Mr. Janaki Nath Bose has referred to mischief making owners. If the sanction of the Collector is to be obtained, how is that to be a remedy against these mischievous evils if they have a real foundation in fact? If those transfers are allowed, the transferee will have no higher rights or status than the owners themselves, and if so by reason of the mere transfer the transferee cannot harass common management. If the owners do not think it worth while to keep together their property, are they to be compelled to do so against their will or interest for nearly all time to come? Not only for marriage expenses and *shradh* expenses is it that money may be required, but there may be other *bonâ fide* demands for money which can be raised only by mortgage or by sale. Transfers at critical moments ought not to be discountenanced and we have no right to say:—"You are not to protect your interests by raising money because the common manager has the property." Take another case—the case of that obnoxious person in Hindu society,—a widow who cannot get enough out of her infinitesimal property to maintain herself. But for this clause she would under the legal necessity provisions of the Hindu law be able to raise money for her maintenance or for the spiritual benefit of her husband. All this will be denied to her, because by this piece of legislation she will not be able to raise money while there is a common manager. Is it possible that such a state of things is to be tolerated?

Having regard to these things, I think the Council ought to set its face against a clause like this and ought not to accept it.

The Hon'ble MR. DAS said:—

I find the Orissa zamindar has been made to take the position of a raiyat here. He is not here himself, and therefore people evidently imagine that everybody has a right to represent him and say what the Orissa zamindar wants and what the Orissa zamindar does not want. There is on my left the Hon'ble

gentleman who represents the landlords in Orissa and Chota Nagpur, and we have just heard what he had to say on this amendment.

Orissa is backward no doubt, but that does not mean certainly that the peopleof Orissa are anxious to be divested of what are their lawful rights. I daresay they have been divested and robbed of their rights under the colour of legislation and sometimes under the colour of settlement duties. I am glad to hear that in this Council those other than Orissa Members have used the word "revolutionary," and that the work done in connection with this Bill has necessitated the use of that word. I have tried my best to impress on some responsible people the difference between taking away vested rights and preventing the acquisition of fresh rights legislation, but I do not see that my attempts have been successful. I find in one of the papers—paper No.-6, which relates to this Bill—a letter on page 9 addressed from the Hon'ble Mr. Janaki Nath Bose where he is described as Vice-President of the Landholders' Association. I know that the Hon'ble Member is not the Vice-President of the Landholders' Association. and he does not represent any landholders' association here.

The Hon'ble Mr. Janaki Nath Bose said :—

I can explain how that misprint came about. The Vice-President of the Landholders' Association is Mr. J. N. Bose, and as his initials and mine are the same, they have put me down as Vice-President of the Landholders' Association.

The Hon'ble Mr. Das, continuing, said :—

The present clause 103 seems to take away the power of transfer and mortgage which they exercised under the control of the District Judge. The withdrawal of this right will be prejudicial to the co owner. I should like to know who has taken the trouble to take the views of the Orissa landlords on this subject? To me it seems to be a preposterous idea. One man has been living an extravagant life, and another man, his co owner, may be living a thrifty life; because the extravagant man feels the necessity of having a common manager and his estate managed by a Collector, must the thrifty man, who can manage his estate well, be saddled with the pay of a common manager for the only reason that his neighbour is an extravagant man? Is he to undergo all that inconvenience because his neighbour is extravagant? This is really visiting the sin of the neighbour on another. Neither moral nor any legislative enactment will sanction this.

The Hon'ble Mr. McPherson said :—

This debate has sprung two surprises upon me:—In the first place I think we are indebted to the Hon'ble Mr. Saivid Wasi Ahmed for letting the cat out of the bag when he explained to us why the Bihar Members object to these new provisions which are proposed to be introduced. They are not so much concerned about the cherished rights of the Orissa proprietors, as about their own prospective rights in Orissa properties.

A still greater surprise to me, however, has been the language addressed to the house by the Hon'ble Raja of Kanika and also by the Hon'ble Mr. Das.

The position is this, Sir.—When this Bill was first prepared, the Bill contained no provision of the nature which is now objected to. The Bill was circulated to the local associations; and the local associations made various suggestions regarding this particular clause. We considered them in Select Committee, and on the whole the Government Members were reluctant to accept them. We did, however, accept them eventually in a modified form, adding the words "without the sanction of the Collector to the restraints proposed to be placed on co-sharers." We said we did not want to imposed on the co-sharer the unlimited restraint upon the exercise of his proprietary rights which the local association wished to impose upon him, but that we were willing to give the Collector a power of adjudication in the matter; that is, if the Collector thought that the exercise of his ordinary proprietary rights was proposed for mischievous ends for the purpose of wrecking the

whole of the common management he would refuse sanction; but if, on t other hand, the exercise of the rights was proposed for a reasonable purpo it would naturally be sanctioned. All the objections that have been taken this clause are based on the false supposition that the Collector is an unreaso able and despotic individual who is not swayed by common sense or l common feelings of humanity.

Not only do we claim that the Collector is a reasonable individual, but w give you the safeguard that he is supervised in this work by the Commissione If the Collector refuses sanction in any case where he ought not to hav done so, then in the ordinary course the aggrieved parties will go to the Com missioner, who will consider their objections and overrule the Collector if l has done wrong. From the beginning we have recognised that the right partition should not ordinarily be refused to the co-sharers, because partitio may obviate the dispute which causes the necessity for common managemen The only reason why this provision was introduced into the section was t prevent some petty co-sharer, who had no desire to consult the good of th joint family but merely wished to cause mischief, from putting in an appl cation for partition, just at a time when the joint estate is beginning t weather the gale to recover stability. An application for partition in respec of a one pice share, put in at an inconvenient moment, may involve the whol estate in a great deal of expense and trouble, and the object of the commo management may be entirely wrecked. We have no desire by this sub-claus to prevent for all time the partition of estates which are subject to commo management. But it may be reasonable to delay the partition till the estat has recovered from the effects of previous mismanagement, or till it can b released under section 102. The Collector will be the best judge of that. H may refuse an application for the time being, but admit it on renewal, and i should be remembered that the parties can refer to the Commissioner, if the think that the Collector has acted unreasonably in refusing. The point I wis to emphasise is that all these precautions to secure the success of common management were put into the Bill at the urgent and repeated request of th Orissa zamindars and their local associations.

Such being the intention of the sub-clause and the history of the case yo will be able to judge of my surprise, when both the Hon'ble Raja of Kanika an the Hon'ble Mr. Das got up in this Council and took exception to those provi sions on the ground that they had been put into the Bill without the Orissa zamindars being previously consulted. Unfortunately, neither the Hon'bl Mr. Das nor the Hon'ble Raja of Kanika have got up their case thoroughly They have not got hold of the true facts. They have not looked at th opinions on the Bill forwarded by the Orissa Landholders' Association, o which I believe the Hon'ble Raja of Kanika has the honour to be the Presi dent. I do not know, Sir, whether the Hon'ble Mr. Das is a member o the Orissa Landholders' Association, he is more probably a member of som Orissa Raiyati Association or possibly of the Orissa Association. Howeve that may be, we have got here the opinions both of the Orissa Landholders Association and the Orissa Association and you will see that I am correct in say ing that these provisions in the Bill have been put into the Bill on th suggestion of the two Orissa Associations. The Hon'ble Mr Das began t read us a portion of the opinion of the Orissa Landholders' Association, but h did not go very far; perhaps it would have been wiser of him to glance dow the page and see what the Association really said.

I will read you their remarks:—

The present clause 101 (3) seems to take away the power of transfer or mortgage whic the common manager under section 98, clause (3) of the Bengal Tenancy Act, used t exercise under the control of the District Judge The withdrawal of this right would b prejudicial to the interest of the co-owners It often happens that, to protect the estat it becomes necessary to sell a portion or to raise money by mortgage, and co-owners ofte do not agree among themselves in the matter. This right must of course be exercised unde certain restrictions, and the Association suggests that the common manager may be veste with powers conferred on managers under sections 17 and 18 of the Chota Nagpur Encum bered Estates Act with such modifications as may be deemed necessary.

The words "otherwise assign" in this sub-clause are not exhaustive and would no include the raising of money by other means, such as by notes of hand, without in any wa charging the property. The liberty of co-owners of contracting any amount of debts durin

the continuance of the management, often embarrasses the common manager and the District Judge, and they find it difficult to meet the demands of previous and subsequent creditors, specially when properties are attached and brought to sale, or a warrant of arrest is issued against one of the co-owners. The Association would therefore suggest that section 3 of the Chota Nagpur Encumbered Estates Act, specially section 3 (*3*), may, with such modifications as may be deemed necessary, be introduced with advantage.

Now, Sir, I have before me a copy of the Chota Nagpur Encumbered Estates Act, and I will read from it to the Council. Section 3 (*3*) of the said Act lays down that:—

So long as such management continues—

(*a*) the holder of the said immovable property and his heirs shall be incompetent to mortgage, charge, lease or alienate their immovable property or any part therefor, or to grant valid receipts for the rents and profits arising or accruing therefrom;

(*b*) such property shall be exempt from attachment or sale under such protest as aforesaid, except for or in respect of the debts due, or liabilities incurred to Government, and

(*c*) the holder of the same property and his heirs shall be incapable of entering into any contract which may involve them or either of them in pecuniary liability.

The Chota Nagpur Encumbered Estates Act, you will see, goes very much further than our Bill. In our Bill we deal with immovable property only, but the Landholders' Association wanted to restrict the power of the co-sharers to enter into any pecuniary debt whatever.

Their opinion continues as follows:—

The Association would further beg to suggest that the common manager should also be vested with the power of preparing schemes for the settlement of debts with the approval and sanction of the Collector, as provided for in section 11 of the Chota Nagpur Encumbered Estates Act, and that, in all important matters, such as mortgage, sale, or settlement of debts the orders of the Collector should be made appealable to the Commissioner as provided for in section 10 of that Act.

As I have said before, it has come as a great surprise to me that, in spite of these opinions having been authoritatively promulgated by the Association, they have now been repudiated by the President of the Association, if I am right in believing that the Hon'ble Raja of Kanika is the President of the Association. I do not know whether the Hon'ble Mr. Das belongs to this Association or to the Orissa Association. But I do know that the Orissa Association as well as the Orissa Landholders' Association was in favour of restricting the powers of the co-sharers further than we have done in this clause.

This is what they say:—

Therefore the Association propose to add the words "nor shall any portion of the estate or tenure be attached or sold in execution of a money-decree against one or more of the co-sharers" after the words "assign their share of the property—

In other words a co-sharer should not be allowed to incur any private debts.

I think, Sir, we have good reason to feel aggrieved that, when we have acted upon the suggestions of the Orissa Associations, the Orissa members should now turn round and complain that we have put into the Act provisions which will interfere with the exercise of their rights, provisions about which they have not been consulted.

Sir, one or two Hon'ble Members have referred to the question of testamentary rights. The Bill, I may explain, contains no prohibition against the testamentary disposition of property.

The Hon'ble BABU DABA PRASAD SARBADHIKARI said:—

What about gifts?

The Hon'ble MR. MCPHERSON said:—

A gift is not a bequest. There is nothing in the Bill to bar bequests.

I do not think, Sir, that I have anything further to say on the subject of this sub-clause. I have explained it sufficiently to the Council, and I think the Council will agree with me that the amendment which has now been proposed and has unexpectedly been supported by the Orissa members should be rejected.

The Hon'ble MR. DAS said :—

Sir, I wish to say a few words in respect of the personal remark against me.

The PRESIDENT said :—

What is the remark made against you?

The Hon'ble MR. DAS said :—

I was in the Select Committee—

The Hon'ble MR. MCPHERSON said :—

I do not remember, Sir, having said anything about what was done by the Hon'ble Mr. Das on the Select Committee. I asked if he belonged to the Orissa Landholders' Association or to the Orissa Association.

The Hon'ble RAI SHEO SHANKAR SAHAI BAHADUR said :—

"I do not wish to make any long reply to the points advanced by the Hon'ble Member in charge of the Bill, but I beg to urge before the Council that this is a Bill, as will appear from the preamble, to amend and consolidate certain enactments relating to the law of landlord and tenant in the districts of Cuttack, Puri and Balasore in the Orissa Division. How these powers which are proposed to be given to the Collector and how these provisions depriving the landlord of their rights—which are said to be in the interest of the landlords alone—should find a place in this enactment? Can you, Sir, in an enactment like this introduce all the provisions of the Court of Wards Act and the Encumbered Estates Act? It is absurd. So long as there is something governing the relations of the landlord and the tenant, you have a right to include them in this Bill. I will not say whether the Hon'ble Member in charge has made out a case that these powers should be taken away from the co-owners and landlords—I think he has not; but I do urge that these provisions should not in any case find a place in the Bill which is now before the Council. If you think, Sir, that the powers of co-sharers should be curtailed or that some law should be passed depriving them of the right of their property or compelling them not to mortgage, sell, or preventing them to apply for partition, you ought to have a separate Bill with which the tenant will have nothing to do."

A division was then taken, with the following results :—

Ayes 13.	*Noes. 27.*
The Hon'ble Babu Bhupendra Nath Basu.	The Hon'ble Mr. Slacke.
" Babu Kirtanand Sinha.	" Raja Kishori Lal Goswami.
" Raja Rajendra Narayan Bhanja Deo.	" Mr. Greer.
" Babu Deba Prasad Sarbadhikari.	" Mr. Macpherson.
" Mr. Apcar.	" Mr. Collin.
" Mr. Saiyid Wasi Ahmad.	" Mr. Stevenson-Moore.
" Maulvi Saiyid Muhammad Fakhr-ud-din.	" Mr. Chapman.
" Babu Hrishikesh Laha.	" Mr. Finnimore.
" Rai Sheo Shankar Sahay Bahadur.	" Mr. Kerr.
" Mr. M Das.	" Mr. Stephenson.
" Rai Baikuntha Nath Sen, Bahadur.	" Mr. Butler.
" Babu Mahendra Nath Ray.	" Mr. Maddox.
	" Mr. Küchler.
	" Mr. Morshead.
	" Sir Frederick Looh Halliday, *Kt.*

Ayes 13.	*Noes. 27.*
The Hon'ble Khan Bahadur Maulvi Sarfaraz Husain Khan.	The Hon'ble Mr. Cumming.
	„ Mr. Bompas.
	„ Mr. Oldham.
	„ Mr. H. McPherson.
	„ Babu Janaki Nath Bose.
	„ Maharaja Bahadur Sir Prodyot Kumar Tagore, *Kt.*
	„ Sir Frederick George Dumayne, *Kt.*
	„ Kumar Sheo Nandan Prasad Singh.
	„ Lt.-Col. G. Grant-Gordon.
	„ Mr. Norman McLeod.
	„ Mr. Stewart.
	„ Maulvi Saiyid Zahir-ud-din.

The following members were absent:—

The Hon'ble Mr. Mitra.
„ Rai Sita Nath Ray Bahadur.
„ Maharaja Manindra Chandra Nandi.
„ Maharaja Kumar Gopal Saran Narayan Singh.
„ Mr. Golam Hossain Cassim Ariff.
„ Dr. Abdullah-al-Mamun Suhrawardy.
„ Mr. Dutt.
„ Mr. Reid.
„ Babu Braj Kishor Prasad.
„ Mr. Dip Narayan Singh.
„ Babu Bal Krishna Sahay.

The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan abstained from voting.

The result of the division was *ayes* 13, *noes* 27, and the motion was therefore lost.

The following motions were, by leave of the President, withdrawn:—

205. If motion No. 201 be not carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that the words—

"nor shall they, without the sanction of the Collector—

(*a*) by sale, mortgage, gift or lease, assign their share of the property, or

(*b*) apply for a partition of the estate or other property in the Civil Court or under the Estates Partition Act, 1897,"

in lines 9 to 14 of clause 101 (*3*) be omitted.

206. If motion No. 201 be not carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that the words "or on a joint application of the co-sharers" be substituted for the words "and not otherwise" in lines 1 and 2 of clause 101 (*8*).

Clause 102.

207. If motion No. 190 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 102 be omitted.

208. If motions Nos. 191 and 194 be carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "District Judge" be substituted for the word "Collector" in line 4 of clause 102.

The Hon'ble Mr. McPherson with the permission of the President moved that after the words "at any time" in the fifth line of clause 102, the following words be substituted, namely:—

"previous sanction of the Commissioner."

The motion was put and agreed to.

The following motions were, by leave of the President, withdrawn:—

209. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that clause 10A be omitted.

210. If motion No. 190 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 102 A be omitted.

Clause 103.

211. If motion No. 190 be carried, the Hon'ble Mr. Saiyid Wasi Ahmad to move that clause 103 be omitted.

212. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that for the words "Local Government" in line 1 of clause 103 the words "High Court" be substituted.

The Hon'ble Raja Rajendra Narain Bhanja Deo, with the permission of the President, moved that, in the place of amendment No. 179, as set out in annexure A, and postponed from the meeting of the previous day, the following be substituted, namely:—

That the words "tank for drinking water" be inserted after the words "village road" in line 7 of clause 87 (*i*).

The motion was put and agreed to.

(Amendment 143 as amended in Council.)

The Hon'ble Mr. McPherson, with the permission of the Presiden moved that in consequence of the acceptance in Council of the modified form of amendment 143, by which sub-clause (*3c*) was inserted in clause 60, the following amendment should be made in line 7 of sub clause (*3b*):—

That for the words "as next hereinafter provided" the words "as provided in sub-section (*4*)" be substituted.

The motion was put and agreed to.

The following motion was, by leave of the President, withdrawn:—

Chapter XA.

213. The Hon'ble Babu Hrishikesh Laha to move that Chapter XA be omitted.

214. The Hon'ble Mr. M. S. Das moved that Chapter XA be omitted.

He said:—

"Sir, when the Revenue Settlement of Orissa was made between the years 1890 and 1900 the records prepared during that period showed that some portions of land were set apart for certain communal purposes, and in the *kabuliyat* executed by the zamindar it was stipulated that he should be considered responsible for reserving those lands for the communal purposes. It is not necessary for me to go into the details of the different purposes for which these lands had been set apart, but they were generally of this nature—grazing ground, cremation ground and reserve tanks—the importance and necessity of which are felt and admitted by all. In moving this amendment I should mention here, first of all, Sir, that it is not my intention to say that

those lands which have been entered in the *kabuliyat* should be excluded, or that any portion of them be excluded. Of course there was a contract between Government and the zamindars in respect of those lands, and that contract was put down in writing in the *kabuliyat*. The zamindar was responsible, and under certain circumstances the Collector could take action to prevent any infraction of the terms of the *kabuliyat*. After the revenue settlement, Sir, came the revision settlement, the object of which I do not understand, I must confess. Whether they were made to correct the records having reference to these changes which property had undergone between the date of the last record and the date when this revenue settlement record was prepared, or it was to correct certain entries which were erroneous either due to clerical mistakes or otherwise, or whether it was for both. I do not know exactly, but I suppose for the purposes of my argument, I should say that they cover both. Now, then, during this revision settlement, Sir, some of the lands over and above—that is the point to which I should draw the attention of Hon'ble Members and of Your Honour—over and above what had been entered in the *kabuliyat* as public grounds, if I may be pardoned for using such an expression, over and above these certain other lands were entered. The question is whether that would really come within the province of the revision settlement work. Revision settlement work, to me, ought to mean a revision of work which was necessary on account of changes in rights in property between the last record made during the revenue settlement and the date of the subsequent record made on the spot. Consequently, if the revision settlement officer undertook to make an entry in the revision settlement records, *primâ facie* it would show this, that at the time of the revenue settlement they were not public grounds, *i.e.* communal land, they were not used at the time of the revenue settlement for those purposes but must have come into such use during the interval between the revenue and the revision settlement. Now the difference between 1900 and 1906 was six years. Now, supposing during these six years there was some change, some lands which were not actually communal lands at the time of the revenue settlement were found to be used for the purposes of the community at the time of the revision settlement. The question would naturally suggest itself, was the use of such a character as to be recognized as an easement, understanding by that term all that every lawyer understands? There was an interval of six years, and even if we suppose that from the day that the revenue settlement officer left the village and the day when the revision settlement officer visited the village again this land was used for this public purpose, will that make it an easement? It may be that it had been used for communal purposes only for three weeks, only for three months, before the time when it was recorded by the revision settlement officer. Who were the persons who recorded all this? Amins. I particularly refer to the Hon'ble Member who will be on the Bench of the High Court a few days hence, and ask him whether the determination of questions of easement can be left to amins on Rs. 10 or Rs 12, and whether the Hon'ble Member will carry those ideas to the High Court Bench? Then these are the people who are entrusted with this work, and what is the result? I have actually a specific case where a chaukidar on his nightly visits used to sit down under a tree occasionally, and the amin went and said, 'This is *sarbasadharan* land in public possession,'—because the chaukidar used to sit there every night; where he finds one morning some cattle going into a tank for the purpose of drinking water—the cattle might have been there by trespassing—the amin goes and says, 'well, the cattle get water here, so it is *sarbasadharan*, used for cattle drinking.' What has been the result, Sir? The result is, I got a telegram yesterday that in one case the Secretary of the Orissa Association had to go into Court, and the Court set aside this record, but look at the expense. And I may tell you, Sir, that before I left for this place—that was only on the 18th—I saw actually notices of three thousand men of the district of Puri—printed notices—in the hands of the pleader, to be sent to the Collector for civil suits in respect of *sarbasadharan* entry; that is in one district. And really this is revolution; pardon me, Sir, this is really, actually, making over the right of inquiry into rights of a most complicated nature to amins on Rs. 10 and Rs. 15. I beg to inquire whether an amin understands what an easement is. He understands very well what it is to

lie down at ease, to make an easy life of it, but whether he understands what easement means, that it is not a tangible thing—easement is a thing which one cannot handle; it is not like property; it is not like a table; it is not part of a property. It is only the right to use a property, which might be with another person in a certain way. Unless the property be in another person, there cannot be easement. I am willing to pay one thousand rupees if anyone will produce an amin before me who will tell me that the idea of easement means that the property must be in another person, so that you might have an easement over it. Well, Sir, what will be the social result of this? The social result will be that the zamindar will not allow any land to be used by the community. He would keep a tight hand and would say, 'Here are my rights to be invaded in a most arbitrary manner, and I shall not allow you to use anything.' And that certainly would not tend to a happy state of things. And then, Sir, are we to legislate here on speculative lines, leaving the people to determine the right law in the civil courts? Legislation, which depends upon remedial effects to be produced hereafter by civil court decisions, does not deserve the name of legislation. The people have a right to say that we want the legislature to think over the matter and to pass the law so that we might be saved the ruinous costs of litigation; but when the legislature says, 'We need not stop to enquire what the result of this will be upon the people, to what length this will prolong litigation, we will pass the Act—we have no time to look into these things. There is the 1st of April coming, and we must pass this' Therefore, I say, what is the result? Now there are three thousand men going to the civil court in one district; another telegram I received yesterday said (this was from Cuttack), 'My clients have given notice to State Secretary for making such suits.' Now what is all this? Are we going to be ruined by litigation? It is said, Sir, very often, that it is this pernicious class of pleaders who multiply litigation. Well, amins do not make any bargain with pleaders.

"Then, Sir, I find this was one of the sections or clauses with reference to which I said that the Hon'ble Mr. McPherson has been ransacking all parts of India and putting on the back of the poor Uriya whatever he finds, anything likely to give a bend to his back—something oppressive, give him a bad character, tell them you are a very turbulent people you must have the worst laws, it is difficult to manage you; Bengal can be managed; Bihar can be managed; but you people cannot be managed, and so you must have laws from all parts of the world. It is only unlucky he has not imported anything from the Andamans; he brings things only from Madras? What does the Madras Act say? He does not look into the circumstances in which an Act of this nature was justifiable in Madras; he reminds me of some of my countrymen who imitate certain things because they are English, without knowing that they are not at all suited to the conditions of this country. You often find some of my countrymen cutting the tails of their horses because Englishmen in India do it; they forget that there are no flies or mosquitoes in England. The poor animal wants his tail here to drive away mosquitoes.

"In Madras, Sir, when the settlement was made Government had put aside some land as common land, and therefore when the Act was passed Government had every right, perfect right to say, 'Well, no assessment was made on these lands, they were exempted from the assessment of revenue, they were our lands, and you, zamindars, have no right to these lands, and consequently they must be set apart now for communal purposes.' But here, what is the state of things in Orissa? You have assessed every bit of land and you have included them in your *kabuliyat*, only exempting such portion as is particularly mentioned in the *kabuliyat*, and now you say you have a right to determine communal land. I do strongly object to Government saying what is communal and what is not communal. Government is perfectly justified, would be perfectly justified, in making a contract with the zamindar, asking the zamindar for such land, and if the zamindars were asked, I am sure, in 95 per cent. of the cases they would say, 'Very good, have this piece of land which has been used for communal purposes.' But that is one way of doing things, and there is the other way of assuming Government have a right to it. If you want for the community, the best thing would be for somebody, not an

amin; to go and inquire which land should be set aside and for what purpose? What do the villagers say? The villagers have been using it. Your right is based on the present use of the land. There has been no quarrel, no dispute about the land, and the people are living in a happy state of things. Is it not desirable, Sir, that a particular inquiry should be made on the spot and something recorded which would cause no disturbance of the peace hereafter.

"The Madras Act says this:—

Threshing floors, cattle stands, village sites and other lands situated in any estate—I am reading section 20 of the Madras Estates Land Act—which are set apart for the common use of the villagers, shall not be assigned or used for any other purpose without the written order of the District Collector subject to it (?) which are assigned, which are set apart for common purposes.

It may be desirable—I am reading from a speech by the Hon'ble Mr. Forbes when this Act was introduced—that I should explain in a few words what is the position of Government with reference to it. The position that the Government take in this matter is that the village communal lands which were in existence at the time of the permanent settlement were not included in the permanent settlement as being lands exempt from land revenue at the time.

"Well, there lies the difference, and it is an essential difference that makes all the difference between the two cases. Then, Sir, *sarbasadharan;* what does that mean? That means universal common. Now we cannot have anything like that; it must be a right which must be ascertained at the time. *Sarbasadharan* in a village—in a village, Sir, we have all sorts of castes, and there are the forbidden castes. The Brahmins have some tanks. Well, the Brahmins and Kayasths and some other people are allowed to bathe and drink water, the same is true of a well. You describe it as *sarbasadharan*, and the next day a mehtar says I have a right to go there; *sarbasadharan* will not exclude him. Well, Sir, these are some of the instances Then, what is said when a man uses this *sarbasadharan* land for some other purpose. The Hon'ble Mr. McPherson, in speaking of waste lands the other day said, 'Some eleven years afterwards the zamindar wakes up one morning when the raiyat has been on the land for some years and says, "Well you must go; you are a trespasser."' Well, that is said of the somnolent zamindar, but what of the Collector? The Collector does not sleep; he is vigilant; he has agencies all throughout;—but it is said if at any time within 30 years—he sleeps for 30 years—a man uses the land, the *sarbasadharan* land for some other purpose, at the end of 30 years the Collector rises; he wakes up to see what an abuse has been made of the common land.

"Now we are asked that we should rely on Collectors who should sleep and find out the state of things after 30 years. Should they really be entrusted with this work? Surely they should never be entrusted with works of this nature. This is one argument. There is another side of it, too. Clause 103A reads:—

When, in the *sarbasadharan* portion of a record-of-rights, prepared and finally published under Chapter XI, or under any other law for the time being in force, an entry has been made that any land has been set apart for the common use of the community, or for the exercise of certain rights by the community, such land shall not, without the written order of the Collector of the district, be assigned or used for any purpose which interferes with the purpose for which it was set apart.

"A common man must evict within six months. The common man is generally a *bajiaftidar*, and the Hon'ble Mr. McPherson has told us what his position is Perhaps his annual income is Rs. 22-8, but he still enjoys the respectability of a zamindar, though he might come to Calcutta and work as a coolie here. This man has got some land, and this land is taken away by the Collector for public purposes. The Legislature is very kind when it allows 30 years to the Collector, and only six months to this poor man. I should be the last person to say that that reservation of communal rights should not be made, and these are recommended by all classes of people. But about these communal rights—we must inquire what rights have been enjoyed. Suppose there is a piece of land which has never been used for communal purposes. A man has his own house on it and he lives

there for 30 years, and at the end of that period the Collector says you must give up the land. But how can he remove from there within six months? Suppose a land is set apart for certain purposes. Afterwards it is found that there was a tank there which was filled up. The zamindar says, 'Let us dig another tank here which we will use afterwards for some purposes.' All are agreed to that. Nobody makes any complaint. But, even here the Collector has got the power to interfere. I do not say that in no instances Government interference should not be introduced. But I do say that in a matter like this, first of all an attempt should be made to inquire into the true state of things.

"We must remember, Sir, that this Council is on the eve of its life. The Hon'ble Mr. McPherson has told us that this Bill is the parting gift of Bengal to Orissa. But what is he going to make a parting gift of? A number of law suits? Will this Government undertake to pay all the costs of litigation in the new province? You legislate here without inquiring into the state of things which you have brought about during the revenue settlement operations. You say the system must be introduced in Orissa, because it exists in Bengal and in Madras. I am in a position to say that three thousand men are going to sue—I saw the notices (printed notices)—, and I am sure that by this time they are in the hands of the Collector of Puri. Think of the idea of thousands of men going into litigation. The Hon'ble Mr. Maddox has seen enough of Uriya life. I may not be a friend of the Uriyas, but he claims to be. Now, is it right, is it at all desirable, is it in the interest of society, is it in the interest of the good name of this Council that this measure should be passed at once? Why not leave this to the other Council? Are we on the eve of a revolution that a legislation of this kind should be passed at once?"

The Hon'ble MR. NORMAN MCLEOD said:—

"May I rise to a point of order, Sir? The Hon'ble Member is bringing in irrelevant matters into his discussion."

The PRESIDENT said:—

"No; the Hon'ble Member is quite in order and may proceed."

The Hon'ble MR. DAS said:—

"For these reasons, Sir, I submit that this chapter should be omitted from the Bill."

Chapter XA.—I beg to move that this chapter be omitted.

The Hon'ble BABU HRISHIKESH LAHA said:—

"I rise to support the amendment moved by my Hon'ble friend, Mr. Das.

"The whole of this chapter proceeds on the assumption of the authenticity of the *sarbasadharan* portion of the record-of-rights, where the communal lands have been entered. But the fallacy of this assumption has been exposed by the Orissa Association (*see* page 283 of the Collection of Opinions) and referred to by Babu Raj Kissore Dass, Manager, Jaggarnath Temple, Puri, in his letter dated the 13th January, 1912. But if this chapter is to be retained at all, its provisions should be made in consonance with the landlord's *kabuliyat* with a view to ascertain the communal lands which the landlords by their agreements with Government have bound themselves to maintain as such in the village, instead of to the *sarbasadharan* portion of record-of rights where entries about communal lands have been made by mistake or neglect of officers of the Settlement Department. To compel a landlord to set apart a certain land as communal land on the basis of the erroneous entry in the record-of-rights and then to prosecute him under clause 249 of the Bill would really be unfair and unjust It is not denied that provisions should be made for the conservation of communal lands. They are necessary for the preservation of health and cattle, but those provisions should not be based upon erroneous record, and care should be taken that in the solicitude for the conservation of these lands people's private

lands are not taken on the pretext of their being communal. No doubt, by clause 103D the Collector is empowered to set aside a wrong entry in the *sarbasadharan* portion of the record-of-rights, but at the outset the landlord is at a disadvantage and, as experience has shown, it is difficult for him to set aside an entry once wrongly made. The provisions of the Penal Code and of the Code of Criminal Procedure are comprehensive enough to cover any encroachment on communal rights. Hence Chapter XA is not at all necessary, and the effect of the clauses comprised therein would be to put the landlords and the tenants at loggerheads, and thus there would be an incitement to the tenants to take as much land as they can from the landlord on a slight pretext. And their combination would be effective so far as evidence is concerned in a Court of Justice as against the landlord's own lands. This chapter in the long run would be injurious to the interests of the landlord."

The Hon'ble Mr. CUMMING said:—

"Sir, the Hon'ble Mover of the amendment was speaking on amendment No. 214 that Chapter XA regarding communal rights should be omitted; but the first portion of his speech was directed to the amendment No. 115 which referred to the agreement made by landlords at the time of the Revenue Settlement He, however, agreed that communal rights in Orissa should be preserved, and I am glad to see that the Hon'ble Member who spoke next also was of the same opinion. These views they have also given in their Minutes of Dissent. The Hon'ble Mr. Das was quite correct in stating what was intended by the expression 'communal rights.' It is intended to refer to grazing grounds, tanks for drinking purposes, cemeteries, burning grounds and other waste lands on which the community can and does exercise some common right. In explaining this to the Council, I think the Hon'ble Member did not sufficiently explain the arrangements under which these entries have been made. At the time of the original Revenue Settlement they were made by the consent of the landlord, and the entries that were subsequently made at the time of the Revisional Settlement were made under the authority of an amending section of the Bengal Tenancy Act. Mr. Taylor, whose settlement work is so well known in Orissa, has stated that there were very many lands which were omitted at the time of the original Revenue Settlement, and regarding which there was no doubt as to the propriety of their entry.

"Now, Sir, some reason should be adduced why Government should interfere in this matter at all. It was found in one case in Orissa that a grazing ground had been consecrated by a holy man, and that a curse had been announced against all encroachers This apparently was effective, because it was found that the present reserved area was practically the same as the original ground. But an arrangement of this kind cannot be made as the general arrangement for the whole of Orissa. What is everybody's business is nobody's business. It may be urged that the private parties interested should take action in a matter of this kind. But to this there is an objection. If the zamindar is receiving rent for the land upon which an encroachment has been made, it is not his interest to interfere. Or, again, in the case of raiyats it is perhaps too much to expect such a general exercise of public spirit on their part in matters in which they are not individually concerned. The present Commissioner of Orissa has advised Government that it is generally agreed that measures should be taken to preserve communal lands and that Government should take the initiative. It has been shown that in a great many cases action has been taken with no result at all. There is no procedure. Notices are issued, and after months of notices and counter-notices the Collector finds himself in the same position in which he started. For all these reasons, Sir, this chapter has been inserted in the Bill as it at present stands.

"If the Hon'ble Members who have spoken would admit the propriety of preserving these rights, they are quite correct in saying that sufficient safeguards should be provided against abuse. I submit, Sir, that safeguards have been and are being provided. I have already mentioned that at the time of the original settlement the entries were made with the consent of the landlords. I remember making such entries myself, and I can assure the Hon'ble Members that there was no case of interference or encroachment on any

zamindar's rights. The orders of Mr. Maddox, the then Settlement Officer, were quite clear on the point. As regards the later proceedings, namely, those of the Revisional Settlement, as I have also explained, the entries were justified because it was legal to make in the record-of-rights an entry concerning any right of way or other easement attaching to the land. There is, therefore, no doubt as to the legality of these entries. As a matter of fact, it was found at the time of the Revision Settlement that new entries had ordinarily been made in consultation with, and with the approval of, landlords. Many of them had given their signatures, and those who were not willing to give their signatures had given their tacit approval. Indeed, a good deal of trouble has been taken to insure accuracy in this respect. No one of course will claim that absolute accuracy can be obtained when one is dealing with a large number of entries. As for the assertion that entries regarding communal lands are the work of the amins, the procedure is these entries have been inserted by responsible gazetted officers. Besides, it must be remembered that objections could be taken and suits instituted against such entries. And now, in addition to that, under a new clause 103 D, which was inserted in the Select Committee, opportunity is given to the Collector of the district to correct any incorrect entries which may be brought to his notice or to strike out any entry regarding lands which may no longer be used for the common good of the community.

"It is also not the case in section 103 A that the lands are being transferred to the Collector. The proprietary right still remains with the zamindars. What section 103 A really means is this: That when such entries have been made, such lands shall not, without the written order of the Collector, be assigned or used for any purpose which interferes with the purpose for which it was set apart. The chapter then goes on to say that, if the lands have been occupied by any trespasser and that if the matter is brought to the notice of the Collector, he may issue a notice, and that after the issue of this notice the Collector may take action and may have the trespasser evicted. Ample provision has been made for appeal both against the action of the subordinates of the Collector and against the orders of the Collector himself. Such, then, are the provisions, and I do not think that it can be said that these err on the side of harshness. It was stated by the Hon'ble Member who spoke first that strong penal provisions have been brought in from other provinces. I would remind the Hon'ble Member that the present Manager of the Jagannath Temple at Puri has stated that any measure to preserve communal land cannot be too drastic. I consider, Sir, that the provisions in this chapter are quite salutary, and that they are not excessively harsh. I would therefore call upon the Council to reject the amendment."

The Hon'ble MR. MADDOX said :—

"The Hon'ble Mr. Das has in his speech appealed to me. I only wish I could follow his arguments more clearly. I did not gather whether he wished us to let the somnolent Uriya zamindar still sleep or whether, if we did so, he would send the pernicious pleader to the Andamans. The Hon'ble Member has doubts about the correctness of entries made by the amin on Rs. 10. I would point out that these entries were attested by responsible gazetted officers. He also objects to new easements being entered. I would point out to him that section 102 of the Bengal Tenancy Act under which the previous records were made is quite different from section 102 as revised by the Amending Act of 1907 under which the revision record was made. There is a great difference between them, as an examination of clause 105 of the present Bill will show. The Council is asked to secure this record now which is to the benefit of the Brahmins, the Karans, and the Pans, as well as the zamindars also."

The Hon'ble MR. DAS said :—

"Sir, the Hon'ble Mr. Maddox says that I did not speak intelligently enough, or rather I was not intelligible enough to him. This is the misfortune we Indian members suffer from talking in a foreign tongue. All that I can say is that I have done my best always to make myself understood. The

question is not who supervises these entries. Am I to understand that a responsible officer actually goes to the spot and sees, day after day, for which purpose a particular land is used and, on firsthand information thus gathered, defines the kind of easement which the public have acquired in it, or am I to understand that the amin reports a piece of land to be *sarbasadharan* and it is then recorded as such? The fact is that *sarbasadharan* record is made without defining the kind of easement. *Sarbasadharan* means that the property belongs to the public, and that very fact will create great confusion; for, as the Hon'ble Mr. Cumming has said, what is everybody's property is nobody's property. Therefore, I say what everybody claims to be his right is really nobody's right at all. One man says that he will graze his cattle here; another says that he will use it as a park, because it is *sarbasadharan*. We must really define the word, or it will lead to confusion. Everything will depend on the interpretation of the word given by the responsible officer in charge of the work. Something is considered as *sarbasadharan*, say in a portion of a zamindari. Surely one zamindar's consent is not enough. Suppose there are four co-sharers in the zamindari. One of them, to spite the others, declares that a portion belonging to another co-sharer is *sarbasadharan*. Will that be taken as such? I mention this as something that might happen, and this will lead to confusion and disputes. I have seen I said notices to Collector ready to be delivered and printed with envelopes addressed by three thousand men. Am I to understand that these three thousand men are rushing to the ruinous expense of litigation without any grievance at all, and is not a change of that nature entitled to the consideration of the Council? Yesterday, I received a telegram from a man in which he says, 'I have got removed and altered by the civil court, and I have given notice with regard to other entries.' I have, Sir, given a typical instance: A chaukidar sits under the tree at night, sometimes in his nightly rounds, and the amin comes and says this is *sarbasadharan*. These people have no idea. The question is that you entrust this duty to these classes of people. I should only repeat that when you are marking what is communal lands care should be taken not to have this done by the amins. I have not the slightest objection to a man being put in jail for six months for trespass on communal land and I should be the last man to sympathise with him; but it would not be fair nor wise to record as such lands which are not really communal. On these grounds, I think that this amendment should be accepted."

The motion was then put and lost.

Clause 103 A.

215. The Hon'ble Mr. M. S. Das moved that the following be substituted for clause 103A, namely:—

"103 A. When in the *sarbasadharan* portion of a record-of-rights of a village, prepared and finally published under Chapter XI, or under any other law for the time being in force any entry has been made setting apart land with the consent of the proprietor for the common use of the community or for the exercise of certain defined rights by the community or land which the proprietor has in the course of a settlement of land revenue engaged by the terms of the *kabuliyat* executed by him to preserve as grazing grounds, cremation grounds and reserved tanks, such land shall be placed under the control of a panchayat appointed by the Collector for the purposes of this chapter, and it shall be the duty of such panchayat to see that the said land is not used for any purpose which interferes with the purpose for which it was set apart."

Encroachment of communal lands.

He said:—

"I do not intend to go over the same grounds again. All that I wish to say is what the Royal Commission on Decentralization stated in their report. I find that the Royal Commission on Decentralization recommended that the

we have no such men of public spirit here as the Hon'ble Mr. Maddox and the Hon'ble Mr. McPherson say. That may be true. In the absence of such spirit or interest, I think it should be the duty of Government to encourage and stimulate the development of the spirit by giving them a chance. There is very little to be done in connection with this. Panchayats have got great powers, and it is in the contemplation of Government to give them much more powers and a much more responsible position. In every village, I suppose, the Hon'ble Mr. McPherson and the Hon'ble Mr Maddox have come across, there is a hut called *bhagabatghar*. It belongs to everybody. Everybody meets there in the evening, and that is a sort of the village club But what the amin generally does when he comes: he would record it as *sarbasadharan*. But it is really a small hut built by the zamindar or some respectable person of the village, and all enjoy the privilege of meeting there in the evening. You cannot call that communal. As regards the infringement of the right who can be the best judges? I suppose the panchayat or the people who live in the village. The appointment of the panchayat should be left in the hands of the Collector. At any rate, if they are likely to neglect their duty, I am sure they will not sleep for 30 years during which at least six Collectors will have come and gone. In a much shorter time they would find out that there is an infringement of the right of the people The difficulty is that competent people cannot be found to undertake this duty, but the fact also is that the people do not understand what rights they have. Directly the panchayat is appointed the matter would be discussed in the village and people will understand such rights. Everybody will understand, 'I have got a right to these lands. I have a right to take water from that place,' and so on, and this will develop the right idea of easement of a community over lands and other places. At present they say: 'I have been grazing cattle on this land because simply the zamindar permits it.' But when this panchayat system is introduced he will understand that he has got a right to do so. Now it has been admitted, I suppose, by the reports and letters which the settlement officers have placed before the Council that with the revisional settlement the raiyat has understood his rights. So if you leave everything to the Collector, let not the initiative be left to the Collector, because the Collector will not be at the place for 30 years but the panchayats will. For this reason the initiative should be left in the hands of the panchayat, and nobody would be better able to judge of these matters than the panchayat. I may read another extract (paragraph 20, page 660 of the Decentralization Commission's report): 'It is most desirable to constitute and develop village panchayats for the administration of certain local affairs within the villages. This system must, however, be gradually and continuously worked. The headman of the village, where one is recognised, should be *ex-officio* chairman of the panchayat, other members should be obtained by a system of informal election by the villagers.' So it is really the idea of Government, I suppose, to develop a spirit of local self-government and not only that, but to develop a sense of responsibility in the people, and this is certainly a thing which any civilized Government should be proud of. I think, for these reasons, that the rights of the people should be entrusted to some people in the village who would be the best persons in whose hands the rights may be safely left."

The Hon'ble MR. CUMMING said:—

"Sir, I oppose this amendment. I have already explained the general position, and the reason why certain powers are entrusted to the Collector. It is not a fact that the proprietary right is taken away from the zamindars. With regard to these communal lands, the proprietary rights of the zamindars still remain. The lands are simply regarded as subject to certain rights of user on the part of the community. I do not think that the zamindars of Orissa would be grateful to the Hon'ble Member if this amendment were carried, whereby the control of such lands, the proprietary right of which belongs to individual zamindars, would be placed in the hands of the panchayat. Undoubtedly the panchayat, as representing the local interests and rights of the community, can and should take proper care regarding the conservation of such lands; and I am sure that a Collector would welcome any report made by a panchayat on which satisfactory action could be taken. On behalf of the zamindars, I think the Government should oppose this amendment."

The Hon'ble Mr. Das said :—

"Sir, I am sorry I could not follow the Hon'ble Mr. Cumming, but so far as I understand he thinks this would be taking away the rights of the zamindars. I do not know if there is anything like that in this proposal. I do not make any further remarks than this that the right which belongs to the public, whatever be the nature of that easement, should be left and entrusted to the panchayat, and what is entrusted to the panchayat would be nothing more or nothing less than what the Collector should be entrusted with under this clause. I do not mean to say that the zamindars should be deprived of the proprietary rights. However, if there is any defect in the wording of my amendment, I am quite willing to leave it in the hands of the Hon'ble Member in charge to correct it. I think the amendment ought to have been accepted.

The motion was then put and lost.

The following motions were, by leave of the President withdrawn :—

216. If motion No. 213 be not carried, the Hon'ble Babu Hrishikesh Laha to move that the following proviso be added at the end of clause 103 A., namely :—

"Provided that the land mentioned as *sarbasadharan* land in an entry of the record-of-rights tally with those mentioned in the landlord's *kabuliyat* executed in favour of Government in regard to the preservation of communal rights, and that in no case shall any entry in the record-of-rights override any condition mentioned in the *kabuliyat*."

Clause 103 B.

217. If motion No. 214 be not carried, the Hon'ble Mr. M. S. Das to move that the following be substituted for the first paragraph of clause 103 B., namely :—

"If, on the complaint of any member, made with the consent of the majority of the members of such Panchayat, it is proved to the satisfaction of the Collector that any person occupies any land referred to in section 103 A, for any purpose which interferes with the purpose for which such land was set apart,....."

218. The Hon'ble Mr. M. S Das moved that the following be added as an explanation to clause 103 B, namely :—

"*Explanation.*—The planting of trees and the growth of fodder on land reserved for grazing shall not be deemed to be interference with the purpose for which such land was set apart."

He said :—

"Sir, my humble labours during the last two days discussion have convinced me that I have been trying to strike blood out of a piece of genuine granite from the rocks of Scotland. I would simply ask the Hon'ble Member in charge whether he is prepared to accept my amendment."

The Hon'ble Mr. Cumming said :—

"Sir, in this matter the Government is prepared to accept this amendment but with the omission of the following words 'and the growth of fodder.' The amendment would then read as follows :—

"*Explanation.*—The planting of trees on land reserved for grazing shall not be deemed to be interference with the purpose for which such land was set apart."

If the Hon'ble Member is prepared to accept it in this form the Government is equally prepared to do so."

The Hon'ble Mr. Das said :—

"Very well, I accept this."

The motion was put in the altered form and agreed to.

The following motion was, by leave of the President, withdrawn :—

Clause 103 F.

219. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "three years" be substituted for the words "six months" in line 3 of clause 103 F.

220. The Hon'ble Mr M. S. Das moved that the words "one year" be substituted for the words "six months" in line 3 of clause 103 F.

He said :—

"Sir, I would ask the Hon'ble Member whether, referring to the circumstances of the case, would it not be reasonable to give one year's time to a man instead of six months, and I hope the Hon'ble Member will accept my amendment."

The Hon'ble Mr. Cumming said :—

"Sir, I oppose this amendment. I see no reason at all to extend the term from six months to one year."

The Hon'ble Mr. Das said :—

"I will then withdraw it."

The motion was, then by leave of the President, withdrawn.

The following motions were, by leave of the President, withdrawn :—

Clause 104.

221. If motions Nos 191 and 194 be carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "District Judge" be substituted for the word "Collector" in line 4 of clause 104 (*2*) (*c*)

Clause 105.

222. The Hon'ble Mr. M. S. Das to move that the words "*bajiaftidar* tenure-holder, *bajiaftidar* raiyat," be substituted for the word "*bajiaftidar*" in line 2 of clause 105 (*b*).

Clause 109.

223. The Hon'ble Mr. M. S. Das moved that the words "but the previous entry shall be admissible as evidence of the facts existing at the time such entry was made" in lines 4 to 6 of the proviso to clause 109 (*3*) be omitted.

He said :—

"Sir, I think the previous entry would be evidence of the facts existing at the time. The idea was that each entry must be evidence till it was replaced by another."

The Hon'ble Mr. Kerr said :—

"Sir, the Government cannot accept this amendment."

The Hon'ble Mr. Das said :—

"I will then withdraw it."

The motion was then, by leave of the President, withdrawn.

The following motion, of which several Members had given notice, was taken into consideration. In the ordinary course, the motion would have been moved by the Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, since his name stood first in the List of Business; but

at his request the President allowed the Hon'ble Mr. Das to move it, and he moved it accordingly:—

Chapter XII.

224. The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, to move that Chapter XII be omitted.

225. The Hon'ble Babu Hrishikesh Laha to move that Chapter XII be omitted.

226. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that Chapter XII be omitted.

227. The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din to move that Chapter XII be omitted.

228. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that Chapter XII be omitted.

229. The Hon'ble Mr. M S. Das to move that Chapter XII be omitted.

The Hon'ble Mr. Das said:—

'Sir, on more than one occasion from my seat in this reformed Council and in the old Council, I expressed the opinion that the principal duty of a non-official Member of this Council was to communicate to the Government the views and wishes of the people to Government, and to interpret the views of Government to the people. This is by no means an insignificant duty in a country where, by reason of difference in creed, colour, civilization and in fact everything which goes to make up a nation's life, there is a gulf between the rulers and the ruled.

As regards the first part of my duty, I beg to draw the attention of Government to the fact that out of the 5 non-official Members who served in the Select Committee, four have recommended the deletion of this Chapter. The only Hon'ble Member who has not written a note of dissent is a gentleman from Bihar—the Hon'ble Saiyid Zahir ud-din. I beg permission of the Hon'ble Mr. McPherson to borrow his felicitous language in referring to this gentleman:—'It is difficult to understand what was the cause of the lively interest in the Bill taken by him. If I may be allowed to use a homely phrase, the official Members, numbering seven, all of whom except one were connected with the settlement work in Orissa, were old enough to take care of themselves.' If veteran settlement officials, supported by the Legal Remembrancer and an expert especially nominated for the occasion, stand in need of succour from a gentleman from Bihar, surely the two Orissa Members - the one an old man with one foot in the grave, and the other however worthy of the responsibilities of his seat here, the youngest member in this Council—ought to be pardoned for their gratitude for any help which is offered to them from Bihar or Bengal in an unequal fight with an illustrious galaxy of officials with the Hon'ble Mr. Macpherson, a pocket edition of a highlander, as their leader.

There was a meeting in Cuttack on the 17th instant. This was a meeting of raiyats convened by me to know their views and wishes on Chapter XII. It was attended by over three thousand raiyats, some of whom had come from villages 20 miles away. The meeting was attended by about five thousand men. The unique feature of this meeting was that about scores of raiyats spoke at that meeting. Some of them were pictures of indigence and poverty. They gave unanimous expression to their feelings and opinions. They do not want this maintenance of records The two settlements have impoverished them while in operation. The arbitrary and incorrect records made have resulted in civil suits which are still pending. Like the mosquito which sucks blood, and when it has its fill it injects a poison which produces irritation, the settlement Amin left behind him the germs of civil suits.

'The raiyats in one voice said "if the Amin comes again to our village we shall leave our house and hearth and migrate to distant lands where we might have rest." I know this, fact was communicated to His Honour by telegram. I invited the Commissioner and the Collector to this meeting so that they might hear what the raiyats had to say on this subject They did not attend the meeting. I believe this was not necessary, for they know that no one, except a few men whom the settlement would provide employment, recommend this maintenance of record.

The zamindars, the raivats and the educated public do not want Chapter XII. So much for non-official opinion.

Let us turn to official opinion. The District and Sessions Judge writes: If the maintenance operations could be carried through by superior and trusted officers all would be well; it is the low paid Amin, the official who comes into the closest contact with the people, who is the source of trouble Going from village to village, he assumes a most important position in the eyes of the villagers, and, as general arbiter of their fate, has to be placated accordingly. Complaint is made that the *Amins* are apt to foment land disputes by pointing out small divergencies from the map which would otherwise pass unnoticed.

We are told that the raivats would welcome the maintenance of the land records; I would rather say that at the most they are quite indifferent about the subject. The landlords are, of course, opposed to it, owing to the expense and trouble it entails. They long for a rest, and I am sure the rest would be acceptable to the raiyats.

During the Revenue and revenue settlement operations, the Amin has opened the vital parts of the poor raiyat, and he is in sore need of rest for the healing of the wound.

I asked the Government to lay on the table letter No. 2151 B., dated the 23rd November 1911, by the Commissioner of Orissa to the Board of Revenue and a letter written by the Hon'ble Mr. McPherson to the Board of Revenue on the subject of maintenance of record

Both these letters are referred to in papers circulated to Hon'ble Members of this Council. My application was disallowed. I also asked whether Government would examine officials as witnesses under Bengal Legislative Councils Witnesses Act of 1866, with a view to ascertain their opinion on Chapter XII. This request was disallowed.

I have reasons to believe that among the Hon'ble Members (I mean official Members) of this Council there are gentlemen whose evidence on oath and the letters referred to above, if produced, would have established that Chapter XII should be deleted.

The Hon'ble Babu Janaki Nath Bose, who was appointed by nomination as an expert for the purposes of Bill, has recorded his opinion that this Chapter should be deleted. When I moved that this Council should not proceed any further with this Bill my motion was opposed on the following grounds:—

"that this Council has in it a large number of Members, official and non-official, who are intimately acquainted with Orissa or have special interests in Orissa"

The question of the maintenance of records was under the consideration of Government just before the end of the last century, and there must have been a great deal of correspondence in which I have reasons to believe the Hon'ble Mr. Maddox took part.

Will the Hon'ble Member-in-charge of the Bill lay before the Council all letters and reports written by the Hon'ble Mr. Maddox on this subject? If my request meets with a fate which my application for Hon'ble Mr. Maddox's letters met, I should be justified in inferring, under the ordinary rules of the law of evidence, that the production of these documents will go against the present decision of Government to make this Chapter law. I am justified in presuming that the Hon'ble Member-in-charge of the Bill and the Hon'ble Member who was the settlement officer, are not in favour of this Chapter.

The other ground on which my motion for postponement was opposed, is that we have in this Council Hon'ble Members who have special interests in Orissa. As far as I know, the Hon'ble Maharajadhiraja Bahadur of Burdwan and the Hon'ble Babu Hrishikesh Laha own estates in Orissa. Both these Hon'ble Members desire the deletion of this chapter.

I said at the outset that it was my duty to interpret to the people of Orissa the policy and views of Government When Chapter XII is passed into law, as I fear it is the intention of Government, the Orissa public will naturally remark that Government declined to postpone the consideration because they had in the present Council official and non-official Members who had special knowledge of and special interest in Orissa; how is it then they have gone [illegible] of these Hon'ble Members and their own trusted officials?

Will the Government be pleased to omit this Chapter from the Act, leaving the question of maintenance to the new Government? The Bill has been so drafted that this omission will not affect the rest of the Act, except a few verbal alterations which the Council may leave to their indefatigable worthy Secretary.

Sir, the question of maintenance has been under the consideration of this Government for several years. Successive Lieutenant-Governors have taken up the question and, owing to the complex nature of the question involved in it, did not bring it before the Council. It is a serious measure, affecting the interests of millions. In its present form it is opposed by the mass. The consequences of a legislative measure which affects the masses, when persisted in against their reasonable objection, seriously affects peace and order, which should be the first aim of Government to secure. In a measure like this the responsibilities of legislation and administration should be combined in one Government. Divided responsibility is inequitable if not iniquitous. In the division of responsibility under such circumstances the responsibility of legislation becomes an utter absence of responsibility, when disastrous consequences result from the administration of the law. Is this Council prepared to run the risk? Is it necessary to do so? Is it necessary that this Council, oblivious of its past history which show anxious deliberation of measures to allay unrest in Bengal, should at the close of its life, after the Hon'ble Members have been photographed, beaqueath to a new Government the seed of unrest?

Sir, His Gracious Majesty the King-Emperor, in his anxiety to secure the well-being of his subjects ordained that Bengal, where there was unrest, should be separated from Bihar and Orissa, where unrest is hitherto unknown. Are we showing due regard to the wishes of His Majesty when we make over to the new Government a legislative measure containing the germs of unrest? In the name of the millions of Orissa, where you have spent a great portion of your public life, I entreat and beseech Your Honour to postpone the enactment of Chapter XII. I entreat Your Honour, in the name of those millions of poor Uriya raiyats whom Your Honour has seen during your long period of service in Orissa; I entreat Your Honour in the name of those poor people who have been actually impoverished by the itching palm of the Amin, to omit this Chapter, and not only that, but the anxiety of making over a thing of this nature to a Government which has not yet come into existence requires us to be careful before we pass this into law; in the name of history I entreat Your Honour, in the name of the anxiety which this Council spent when the unrest in Bengal was uppermost in its mind, to consider well whether a measure like this, when the responsibility of administration does not lie upon this Government, should be passed at this stage of the life of this Council. And, Sir, may I lastly appeal to Your Honour that where there is peace, where there is order, let us not make over a thing which at least show signs of unrest hereafter. So that, Sir, when this Act comes in, when this chapter is introduced, should there be any unrest, should there be any sufferings amongst the poor masses, should the operation of law increase the sufferings of the poor masses, it might not be said this Act was passed during the last days of a Government which did not have the responsibility of administration, and consequently, they did it without a proper realization of their share of the responsibility. On those grounds, Sir, I specially appeal to Hon'ble Members, whether official or non-official; when you have the interests of millions, let us stop to consider whether millions of poor men whose condition, as I said, it is not possible for us to realize—let us consider whether this measure is necessary. Specially, I wish to bring to the notice of Hon'ble Members several schemes with regard to the maintenance of records have been put forward before Government; this is one of the schemes. An experiment was being made in Orissa; the result of that experiment is not very satisfactory, at least it is not satisfactory to the raiyat. It is not the only possible scheme in order to have a maintenance of record. It may be that this matter has been pending before Government for a long time, and certainly before it takes shape, before it is finally forged on the anvil of legislation, it ought to receive more consideration, still more consideration, at the hands of Government, who will be charged with the responsibility of putting the law in practice, who will be charged with the responsibility of the administration.

The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan said :—

"Your Honour, I had a similar motion, but I allowed Mr. Das to open the debate on the subject, not only because he would be best able to tell us the condition of Orissa, but because of his age and experience. Of course, I can well understand the position of Government in this matter, that to have no maintenance at all is a thing that the Government cannot probably accept, but my argument against the retention of this Chapter I shall say in a few words and they are these:—that no explanation has yet been given as to how, during the last 27 years in Bengal, the Bengal Tenancy Act has worked without this Chapter. We have had not this maintenance Chapter in Bengal, nor in Bihar Of course now that we shall have it in Orissa, my Bihar friends will have to look out, as much as ourselves, that when the Bengal Tenancy Act is amended, we shall have this Chapter thrust on us. I do not know what my learned friend, the Hon'ble Maulvi Saiyid Zahiruddin, has to say to this, probably he will give his usual nod as he used to do in the Select Committee, and that of course in the other way. But what I intend to say in this connection is this:—that individual officials in Bengal are against this maintenance. The Government of India, I understand, have taken up a position regarding this maintenance in the same way that they took up in the Calcutta Improvement Trust Bill on the question of the 15 per cent:, compensation, and regarding which my friend, the Hon'ble Mr. Bompas voiced so ably on behalf of the Government. Knowing that—of course I know what the fate of our amendment will be, but I still would ask the Government to consider that, when in Bengal we have not had this maintenance Chapter for so long, whether it is right to extend it to Orissa at this juncture, whether or not we could gather more opinion on this question of maintenance before pressing it forward. On these general grounds, I support the motion, although I also feel I cannot lay too much stress on this point, one cannot very well argue that you should not have maintenance at all; but at the present juncture, I do not see the necessity of having this matter pressed forward at the Government of India's request. I therefore think that the Chapter should be deleted."

The Hon'ble Raja Rajendra Narayan Bhanja Deo said :—

"Sir, I beg to support this motion. Mr. Das has very ably and strongly pointed out how the provisions of this Chapter will prejudicially affect both the tenants and the landlords and how they will be harrassing to both. The scheme of periodical maintenance of records was first proposed, I believe, during the currency of the last Provincial settlement of Orissa, and it was discussed by high officials for a series of years. Most of the high officials were intimately connected with the administration of Orissa, and had intimate knowledge of the people opposed to its introduction. They also pointed out that the cost of working such a scheme will be enormous, and that neither the Government nor the people would derive any appreciable advantage, proportionate to the cost to be incurred. When at last the scheme came out of the legislative anvil in the shape of separate Chapter in this Bill, and presented before the public, all the public bodies and most of the high officials condemned it and opposed its introduction. The official who is now at the head of the administration of Orissa is we presume, from the non-production of his letter, opposed to it. The people, at a mass meeting held on the 17th, had given expression to their opinion strongly against this measure. Why then in the teeth of unanimous protest this Chapter is going to be introduced, which will not serve the interest of any party but prove harrassing to all? In the opinion of all, the people need rest after two long protracted settlement and revisional settlement proceedings. How these proceedings have affected both the landlords and the tenants, have been graphically described in the opinion submitted by the different public bodies—and I need not repeat them.

Is this measure introduced into Orissa so that it may serve as a precedent and a justification for its introduction in those parts of Bengal and Behar

where records-of-right have been or will be prepared? The principle of following as precedent the legislative measures introduced in other parts of India has been adopted in the manufacture of this Bill I should earnestly draw the attention of my colleagues of Bengal and Behar to this, and I hope they will take warning."

The Hon'ble Babu Hrishikesh Laha said :—

"I rise to support the amendment which has been moved by my hon'ble friend, Mr. Das. This amendment also stands in my name.

This Chapter which relates to the maintenance of a system of land records, has been inserted in the Bill as has been explained in the statement of Objects and Reasons, with a view—

(*a*) 'To protect the rights of those who possess interests in land,
(*b*) to furnish information which will form the basis of assessment of land revenue,
(*c*) to furnish information when required for administrative purposes,
(*d*) to furnish up to date agricultural statistics.'

by the 'framing of special edition of record-of-rights for any area, either yearly or any other interval of time' as provided in clause 148. The tendency of this clause, therefore, is to make the settlement of Orissa perennial. If the object of the maintenance of a system of land records be to maintain peace, order and harmony among the landlords and tenants, as is clear from the provision (*a*) mentioned above, then a more cumbrous and clumsy piece of machinery could not have been invented to crush them out altogether. The very reverse would be the case if this system were brought into operation. Peace, harmony and security of rights would have to make room for discord and disunion. It would prove a prolific source of hardship, injustice and oppression, and consequent dissatisfaction among the people. All the evil passions would be stirred up, and they would be kept up by suits and proceedings in the civil, revenue and criminal courts. The effect of the enforcement of this Chapter would be to sow the seeds of litigation broadcast over the land, open a wide door to perjury and fraud, give rise to endless corruption among the subordinate *amlas* and throw the agricultural population into a sea of trouble, expense and loss. The *amins* and the underlings of the settlement departments who would be entrusted with the measurement of lands in order to adjust contentious claims, would have a good time of it and would reap a rich harvest by fomenting dispute. Experience has shown that it is not safe to let loose such a corrupt set of men among the peaceful, contented and poor people of Orissa. They have to attend the revenue settlement at the end of every fifty years; and also the revisional settlement within that period, leaving their ordinary avocations and other duties, and at the same time to meet all expenses and undergo all sorts of trouble to secure their rights. This is enough to make a peaceful people most discontented, but to impose upon them the fresh burden of annual or periodical land records would prove simply disastrous. All the objects enumerated in the statement of Objects and Reasons can be better secured by the record-of rights themselves, if certain safeguards be provided for the giving of information to the officers employed for that purpose with regard to succession, transfer, or reclamation to be noted in the last record-of-rights, such note forming part of record. The mere idea of measurement is so much associated with trouble, expense and anxiety, that it would be extremely harrassing to the people if the system of the annual maintenance of the land records be thrust upon them. The evils of the maintenance scheme would far outweigh the benefits that are expected to result from it To let loose the evils of settlement operation upon a poor but contended people, in order to secure information for the purpose of assessing revenue which could be gleaned from existing materials, would not, to say the least, be justifiable. The finality and authenticity of the record-of-rights would be taken away, though its completion has been brought about at an enormous expense. Under these circumstances, it would be a wise policy to let the people of Orissa alone, and save them from the infliction of a yearly or periodical land records. This Chapter, therefore, should have a quiet burial."

The Hon'ble Mr. Kerr said:—

"Sir, the Chapter which we are now considering is apparently regarded as the most contentious matter in the whole Bill, and I rise at this stage not to explain the views of Government or my own views on the subject of the maintenance of records generally, but mainly in the hope that I shall be able to clear up a few points, which will lessen the amount of heat and controversy which appear to have been introduced into our discussion of this question. I must confess frankly at the outset that I am not in a position to deal with the matter with perfect freedom, because many important questions in regard to the maintenance of records are still under discussion with the Government of India, the most important being the question of the periods at which maintenance, or as I should prefer to call it, periodical revision of the records, is to take place. But these questions, as I shall show, do not arise in connection with Chapter XII of this Bill. Many years must probably elapse and many experiments will have to be made, before a final decision can be come to or a final scheme of maintenance be adopted Meanwhile, we want a simple and elastic procedure which will enable us to carry on proceedings for the revision of record-of-rights with less trouble and expense than we have hitherto had to incur, and we merely ask the Council to give us such a procedure, and not to come to any decision on the various schemes which have been put forward. I should like, in the first place, to clear up a few misconceptions. I have had a good deal of experience of this so-called maintenance work myself. About 15 years ago, I carried out what was probably the first experiment in Bengal, under the guidance of my hon'ble friend who is now the Chief Secretary, and was then my Settlement Officer. About five years ago, as Director of Land Records, I started the revision settlement of Orissa. I do not propose to give the Council any of my experience in connection with Orissa, as my hon'ble friend Mr. McPherson has had more recent experience of the work than I have had, but I have taken part in most of the discussions which have been held on this subject, and my experience has been that those discussions and the work of maintenance have always been rendered unnecessarily difficult and controversial, by the fact that many of the people who were taking part in them did not really know what was meant by the word maintenance, and that those who did know what was meant by the expression did not mean the same thing as other people who were working and discussing the subject with them. The word maintenance is in fact one of those unfortunate words which arouse all the angry passions in human nature, simply because it does not convey a clear meaning or an identical meaning to everybody, and because it arouses, in the minds of many, apprehensions for which there is no justification. The idea of a maintenance recorder conjures up an individual with a record in one hand and a pen on the other, who is always lurking about the corners of fields ready to jump out whenever any transaction take place between landlord and tenant in regard to a field, and to make the most he can out of the parties to such transactions. There is an even still more horrible expression which is sometimes used in discussions and correspondence on this subject. I mean the term continuous maintenance. That term brings up the idea of the same individual with a record in the one hand and his pen in the other, rushing round the country and trying to keep his record up-to-date from moment to moment and altering it with due formalities whenever an old man dies or a little child is born into a co-sharing family These are the sort of ideas, I think, which have given maintenance such a bad name among a large part of the agricultural population of the province; but I need hardly say that Government never intends anything of the sort by the introduction of maintenance schemes, and I will try and explain briefly, what purpose the provisions of the Chapter which we are now discussing, are intended to serve. I would point out, in the first place, that the word maintenance finds no place in the Chapter itself. What section 143 authorizes Government to do is to revise the record-of rights at such intervals as may be found necessary. Now, I would ask the Council in discussing this matter, to drop the word maintenance altogether, and to confine themselves to the question of revision. I suppose everybody will admit that records-of-rights must be prepared in this country. It has been the settled policy of Government to prepare such records for the last quarter of a century, and I do

not think the wisdom and necessity of that policy will be questioned by any responsible person. At any rate it is too late to do so now in regard to Orissa, because a record-of-rights has already been prepared for the whole of Orissa. Now, it is quite obvious that once you have prepared a record-of-rights, it cannot stand good for all time. It must be revised and brought up-to-date from time to time, or else it would become absolete. It would not be referred to by the landlords and tenants or by the courts, and it would be of no use in carrying out its main purpose, which is to prevent disputes, to secure the landlords and tenants in the enjoyment of their legal rights and privileges, and to cheapen and simplify the decision of any disputes which may arise regarding these matters. For this purpose, the records must be reasonably up-to-date. It is, thus, clearly advisable that from time to time you should revise your record and bring it up-to-date. Such revision, as Hon'ble Members from Orissa are aware, has already been carried out in that province, but there is no special provision of the law enabling revision to be made, and the consequence was that we had to do the Orissa revision under the provisions of Chapter X of the Bengal Tenancy Act, which were used for the purpose of framing the original record. Now the main objection to this is, that Chapter X is unnecessarily cumbrous for the purpose of revising a record which is recent and not very much out-of-date. I need not worry the Council with details of the procedure which has to be followed under Chapter X, but it is sufficient to say that Chapter X provides for two publications of the record in the course of its preparation under the Chapter, which corresponds to Chapter XI of this Bill which we have just passed. Now, before the first publication of records, disputes between landlord and tenant are decided by an attestation officer, who is of the status of a Deputy Collector or a Sub-Deputy Collector. When the first publication is made another opportunity is given to the parties to raise objections and disputes; after these have again been decided with rather more elaboration than at the attestation stage, there is a second publication and after that second publication opportunities are again given to the parties to raise objections and disputes, which are tried with all the formalities of a civil suit, and appeals against the decisions in these last disputes lie to the Civil Court and to the High Court. There is, moreover, a provision in Chapter XI which allows the Local Government to recover the costs of the preparation or revision of a record-of-rights made under that Chapter, from the parties Now, all this procedure is unnecessarily elaborate, as I have said, in the case of a record-of-rights which is of fairly recent date, and in a part of the country where there has been no very rapid development of cultivation or material changes in agricultural conditions since the original record was prepared. The consequence is that Government has found the need of a simpler and cheaper, and more expeditious method of revising a record-of-rights than it has hitherto possessed. This is the primary explanation of Chapter XII, for which the Hon'ble Maharajah of Burdwan asked. Hon'ble Members will see that that Chapter provides for only one publication of the revised record. After that publication, objections will be heard and the record corrected accordingly. But there will be no further publication and no further opportunities for raising disputes. The only appeal will be in the case where the Land Records officer has settled rents on the ground of alteration of area in a tenancy; but the Land Records officer will not be empowered to alter rents on any other grounds.

Now, I think that leaving aside for a moment all controversial points in connection with maintenance, the Council will agree with me that it is advisable that Government should have this cheap and simple method of revising records-of-rights in cases where a more elaborate procedure is not required. This, as I have said, is the object of this Chapter, and I would ask the Council to accept it as such, and I need hardly say that the Council, by passing this Chapter, does not in any way express approval of any particular scheme or form of maintenance or revision of the records. All it does is to give Government power to direct revision to be made in a simple and economical way, where it is satisfied that revision can be efficiently conducted on these lines. I would add, as another point which is not without importance that this Chapter XII contains no provision, as Chapter XI does, enabling Government to recover the cost of revision from the landlords and tenants concerned. It is intended that the cost of revision should be borne by Government, and that the landlords and tenants should not be required to pay, as they are in the case of an initial

record-of-rights prepared under Chapter XI. I should like to stop here, but from the remarks which have fallen from previous speakers, the Council would perhaps like me to give some indication of the views of Government as to the proper periods at which a record-of-right should be revised. Well, as to this I regret to say that I cannot give the Council any information, for the simple reason, as I have already explained, that Government has not yet made up its mind on the subject. We are still in correspondence with the Government of India. Various schemes of revision have been proposed, annual revision, biennial and triennial revision, quinquennial revision, revision after 15 years, revision after 20 years and revision once in a generation. At the present moment, an experiment is being made with triennial revision in Orissa, but it has not gone far enough to enable us to say whether it is likely to be feasible as a permanent arrangement. The simple fact is that we have had so little experience of this revision work so far that it is not possible for us to say what a suitable period for revision would be. I may give it as my own personal opinion, that annual revision is too expensive an undertaking and is, moreover, not required in the existing circumstance of the province, but I must warn the Council that this is only my personal opinion, and that I have no authority to speak on behalf of Government in regard to this matter. It is understood, however, that some objection has been taken to the wording of section 143 (*a*) as implying that Government is committed to a scheme of yearly revision. This impression is quite wrong, and in order to remove it, the Hon'ble Member in charge of the Bill, will move at the proper time the omission of these words and the substitution of a provision allowing revisions to be made at such periods as as may seem suitable to the Local Government. As I have already said Government is not committed to any particular scheme A scheme which has appealed to me and to a good many other people, is one under which an officer of the Sub-Deputy Collector class would be appointed for each thana or similar area, to look after the land records and to deal with most questions affecting the relations of landlord and tenant. He might also try rent suits or at any rate uncontested rents suits, or simple rent suits where no questions of law were involved He would, in fact, be in charge of the administration of the Tenancy Act in the particular area in his charge, and would keep the land records up to date, so far as was necessary to enable him to carry out his work. I myself think—it is only my personal opinion—that portions of the records *might* have to be revised more frequently than others. *For instance, the records of* proprietary rights might perhaps be revised every year, while the records of tenant rights might be revised every five or ten years. Again, it is extremely probable that the varying conditions in different parts of the country might make it advisable to make the revision period different in different places. For instance, in a country where cultivation was rapidly extending, it would be advisable, both in the interests of the landlord and of the tenants, to revise the record fairly frequently. In a more settled part of the country, where cultivation has reached its limits, it might be sufficient to revise the records or portions of them at longer intervals. I wish it to be clearly understood that these remarks must not be taken as indicating any settled conclusions on my own part and still less on the part of Government as to any particular scheme of revision, but I am merely mentioning different schemes to show the difficulties which surround the whole question, and which make it essential that the provisions of the law on the subject should be as elastic as possible What I ask the Council to do is to accept the view, that once land records have been prepared revision is necessary sooner or later, and that we do not at present know what periods would be suitable for revision in different parts of the country, but that we do want a revision procedure which will enable the work to be carried out as expeditiously and cheaply as is consistent with accuracy, and that we require such a procedure not less in the interests of Government than in those of the landlords and tenants. This Chapter prescribes a procedure which has been found suitable in certain experimental work which has been carried on in Orissa during the last two or three years. It is permissive and elastic but not unduly elastic, and I would ask the Council to accept it as fulfilling the objects which I have described above, and which I think will be admitted by all reasonable people to be very necessary objects, although there may be room for difference of opinion as to the precise procedure to be followed and the precise periods at which revision should be undertaken. But

such questions do not arise now, and there is no need to decide them now. As I have already explained, Government can direct a revision of the records as often as it likes, under Chapter XI of the Bill. All that Government now asks the Council to do is to provide a simpler procedure than that of Chapter XI, which can be put in force, if and when required, so as to give the minimum of trouble to landlords and tenants, when revision operations are undertaken for their benefit."

The Hon'ble Mr. McPherson said:—

"Sir, my hon'ble friend, Mr. Kerr, has undertaken the task of expounding the policy of Government in the matter of maintenance, of explaining the objects and advantages of Chapter XII of the Bill, and of conducting its main defence. I intervene in the debate in order to tell Members what has been my practical experience of the working of the maintenance scheme. I have been in supervisional charge of the experimental operations in Orissa for the last three years. I have seen the recorders working in the villages amongst the raiyats, I have checked their work in the fields, I have watched the attestation of the recorded changes by the maintenance staff who are gazetted officers of the Subordinate Executive Service, and I have discussed the value of the work both with landlords and tenants, not in the Council Chamber or Committee room, but under the open sky. I can assure the Council as a result of my personal observation that, in actual working practice, this business of keeping the land records up-to-date is not regarded with the unmitigated aversion and horror that have been displayed towards it in Council. The contrast between the theoretical dread of an innovation, and the experience of it in actual practice reminds me of the universal horror which, not so long ago, was felt in India towards the *Kala-pani*. Now, that long sea voyages have become common experiences in the lives of Indian gentlemen, the *Kala-pani* has lost its terrors.

Let me, Sir, relate my personal experiences of experimental maintenance. When I have wandered over the fields with the recorder and the raiyats, I have found the latter highly interested in the work. I have asked them whether they like it or not and they have said 'we do like it, because we get all our transfers and successions recorded at once, and there can be no dispute.' I have asked —'Does it not worry you to come out to the fields and follow the recorder about?' They have replied 'It is not much trouble, as it only takes 2 or 3 days, but we think it would be enough if he came round every second year or every third year, as there is not much to record every year.' I have asked them, apart from the recorder, if the recorder takes money from them and they have almost invariably replied 'No,' sometimes, no doubt, with a twinkle of the eye, which indicated that the recorder was not above the usual custom of this country but not a bad fellow for all that. Sir, we have heard much from the Hon'ble Mr. Das about the misdeeds of settlement underlings, and, though I cannot vouch for the absolute integrity of the field staff, I think that they have been painted blacker than they really are. If you call together a meeting of raiyats and invite them to recite their grievances, promising them at the same time hot cakes and ale and their travelling expenses, you will find no difficulty in collecting a crowd and getting together many a piteous tale of woe. Before each day is over many disappointed litigants leave a Settlement Camp. If the Hon'ble Member had only issued his invitations sooner and spread his net further, he might have had a crowd of forty thousand instead of only four. I ask the Council to attach no importance to the argument against maintenance based upon this so called mass meeting of raiyats. I do not know if the Hon'ble Member has ever watched maintenance work in the field or the process of attestation at a maintenance camp. I know from his published writings that he has paid a visit in the dead of night, to a revision settlement Camp and has painted a picture of distress which excites my wonder. My experience, Sir, has been different. I have paid hundreds of visits to attestation camps at all hours of the day and night, and I have never found anything but cheerful and interested crowds in attendance. The hardship of night attendance is to the officer and his staff rather than to the people. The officer must work about nine hours a day to get through his programme He is ready to begin at 8 or 9 A.M., but most Orissa raiyats prefer to attend after midday, and to go on till the hour of their midnight meal approaches.

I have not confined my observation of the maintenance experiment to the raiyats but have also consulted landlords. I have discussed the work in a friendly informal way with some of the Balasore zamindars who have had the experiment going on in their estates for nearly three years now. Though on the whole, most of them would prefer to be without it, they are not keenly opposed to it. A much respected Zamindar of Balasore, Raja Baikuntha Nath Dey, has told me that he appreciates its many advantages, but would prefer to have some sort of compulsory or State-aided registration by the zamindars themselves. Another influential Zamindar, Babu Radha Charan Das, who was hostile when the revision settlement started, pronounced in favour of maintenance when I asked his opinion in September last. Let not then the Council imagine that a wholly new and terrible thing is being sprung upon the people of Orissa.

It is not reasonable to suppose that the Supreme Government should select Orissa as the jumping-off ground for an absolute leap into the dark. What is proposed for Orissa has been in vogue for many generations in other parts of India. It was indeed the usual and universal practice in India, long before the days of British rule, to employ a village recorder to keep the land records and accounts up-to-date. The practice has continued uninterrupted in many parts of India. The disuse into which the practice has fallen in Bengal may be ascribed, without hesitation, to the introduction there of the permanent settlement. The subject began at once to receive less attention from the ruling power, because there was no revenue involved. To its neglect may be ascribed much of the dispute, and difficulty and litigation, that have arisen in the agrarian economy of Bengal. We have gone some way by our surveys and settlements to make up for the past neglect. Government wants, by this measure, to take power to go one step further. It is no innovation that is proposed, but a return to the old order of things, a return to the arrangement that now obtains in all the temporarily-settled provinces of India. It was in the highest degree natural that Government should select Orissa for the experiment, as Orissa is a temporarily-settled area. Let any member of this Council go to Sambalpur to-morrow and he will see maintenance actually at work with the cheerful and interested acquiescence of landlords and headmen and tenants. In Orissa the experiment could not be tried, till Government had first brought the ten-year old records up-to-date. Government has spent 12 lakhs of rupees during the last five years, in bringing the records of Orissa up to date, in order to pave the way for maintenance. All this has been done with the sanction of the Secretary of State, who has closely followed the work. I would therefore, entreat Hon'ble Members of this Council to pause before they vote for the exclusion of this Chapter which is purely permissive, and will not be set in motion except at those intervals of time which appear to the Supreme Government and the Local Government to be suitable, on a joint consideration of the results of the experimental work now in progress. Many important factors have to be taken into account before any decision is come to. There is first the question of finance, which alone makes it highly improbable that the periodical revision of records can be conducted at intervals of less than three years. There is the question of its effect on the district administration, the relief on the one hand that it may give to the judicial and revenue courts, and the closeness of touch that it may induce between the officers of administration and the people, while on the other hand there is the burden of work that it may throw on the district officer. Even more important is the effect it may have on the people. We have to consider what they feel about it, *when they know what it really means*, whether it causes them undue harrassment and what are the compensating advantages. You, the non-official Members of this Council, have told Government very plainly what you think about the maintenance scheme. You have given us your opinions in your notes of dissent from the report of the Select Committee, and in your speeches in this Council. The local associations have given us their opinions, all of which are adverse, and the Hon'ble Mr. Das has organized, for our benefit, a mass meeting of raiyats who have given us their opinions. All these opinions will be duly considered by the Local Government and the Supreme Government. Would it not be wise to stop short here? Would it not be in the interest of your [illegible] to say—"these are our opinions. The Chapter, however, is

permissive. We know that Government will take our opinions into account in weighing all the arguments for and against maintenance, and we trust Government not to enforce the Chapter unless there are other considerations which outweigh those advanced by us, and in any case not to enforce it except at reasonable intervals of time." This attitude, in my opinion, would serve your purpose better than an absolute rejection of the Chapter, which might be interpreted by the Supreme Government as pure obstructiveness.

With these words, Sir, I support the Hon'ble Member on my left, in opposing this amendment and I would counsel the Hon'ble Mover to withdraw it.

The Hon'ble Mr. Das said:—

"Sir, I will begin where the Hon'ble Member in charge ended. I am really surprised to know that giving expressions of opinion on a matter like this should be considered as mere obstructiveness on the part of the Government. And it is on this ground that I am asked to withdraw my motion on this Chapter. All that the Hon'ble Member has told us is that at the present time the Government is in an indecisive state of mind; it does not know what agency is to be employed in carrying out the experiment. It does not know what the result of that experiment will be in Orissa. The whole thing is in a nebulous state, if I may say so. There is also no knowing what the decision of the Government of India will be as to the details. And yet when it comes to my amendment, I am asked to withdraw my amendment. Why, if anybody is to withdraw, it is the Government. The officials do not know what they are going to do. They do not know what agency they are going to employ. They do not know what would be the result of the experiment. They do not know at what intervals the operations are to be introduced. And yet we are told that before this Council breaks this Bill must be passed into law. What does it mean?—Pass a thing which is purely abstract, which may not be fit for anything, make it over to another Government and let that Government work it as it likes. That, Sir, really is the position which can be gathered from the statement of the Hon'ble Member in charge.

He has told us that he has visited places where he found something "super"—I do not remember the exact wording—but it was something "super." Well, Sir, I do not know whether there is anything "super" in the ministerial staff of the Revenue Survey Office. He has also told us that he found the raiyat contented. I do not of course say that everybody is discontented. The Hon'ble Mr. McPherson also noticed the twinkle in the raiyats eye about the recorder's attempt to take money. I know a great deal more of the meaning of that twinkle than he does. It meant plainly 'what do you see, can you see anything'?

I do not know what the Hon'ble Member in charge means by his reference to the mass meeting. He asks the Council not to take any notice of such meetings. They did not have hot cakes at the meeting which was recently held, but I certainly wrote, when convening the meeting, that those who were very poor and could not afford to pay their railway fare and have to come from a long distance would be provided with the cost of their journey. And I think, I was quite right. It would have been quite unreasonable to expect raiyats to come from a long distance in three days notice. It is all very well for Government officials to order the raiyat to come and run about without the least thought as to their convenience. But I thought it my duty to provide them with their costs. Sir, I do not like to take up the time of the Council any more. The Hon'ble Mr. Kerr has told us that the procedure adopted in this Chapter is not as long as it is in the other Chapter, and this will be a very short thing, a very short operation. Now, I say, the danger lies in the very shortness of it. It gives greater opportunity to the man to make incorrect entries, and their incorrect entries go undetected. It is not right to make short work of a thing when other people's rights are concerned. We have got a graphic description from the Hon'ble Mr. Kerr of the man with an ink pot in one hand and a pen in the other going about the village and making entries. If we have a man of due sense of responsibility it would be all right. It is the position and the character of the man and his sense of responsibility that we want. Government thinks that such men can be had in plenty, as if it is the easiest things in

the world to get a man of character, with a low pay. How much does Government propose to pay for the sense of responsibility of these men? As I have said, and as Mr. Adami has also said, it is the man of character and position that is wanted. If the Hon'ble Mr. McPherson would accompany me to a village—it may be any village in the district of Cuttack—and take the people unawares as it were, without giving any notice, I can show him a state of things which is anything, but desirable. It would not require hot cakes to gather about 10 or 20 thousand Uriya men in Calcutta—in the grounds of Belvedere, if he likes. And I will ask Mr. McPherson to question them as to what would be their condition under this Chapter. Are we to encourage *amins* and touts. It is the ignorant raiyat who will suffer. I may not be a friend of the Uriyas, but I will ask Mr. McPherson to go and ask the poor Uriya raiyat whether he likes these provisions. He may have some idea that these provisions are something very different from the revision settlement, but it is the same revenue settlement. But he must be told plainly what it is, it would be no use preying on his credulity begotten of ignorance. If I withdraw my amendment, I would not be the friend of Orissa as I consider myself to be."

The motion was then put and lost. . . .

'The Council was then adjourned to Wednesday, the 27th instant at 11 A.M.'

A. W. WATSON,

Offg. Secretary to the Bengal Legislative Council.

CALCUTTA,

The 27th March 1912.

Abstract of the Proceedings of the Bengal Legislative Council assembled under the provisions of the Indian Councils Acts, 1861, 1892 and 1909.

THE Council met in the Durbar Hall at Belvedere on Wednesday, the 27th March, 1912, at 11 A.M.

Present:

The Hon'ble SIR FREDERICK WILLIAM DUKE, K.C.I.E., C.S.I., Lieutenant-Governor of Bengal, sub. *pro tem.*, *presiding*.

The Hon'ble MR. F. A. SLACKE, C.S.I., *Vice-President*.

The Hon'ble RAJA KISORI LAL GOSWAMI.

The Hon'ble MR. R. T. GREER, C.S.I.

The Hon'ble MR. D. J. MACPHERSON, C.I.E.

The Hon'ble MR. C. J. STEVENSON-MOORE., C.V.O.

The Hon'ble MR. E. P. CHAPMAN.

The Hon'ble MR. B. K. FINNIMORE.

The Hon'ble MR. J. H. KERR, C.I.E.

The Hon'ble MR. H. L. STEPHENSON.

The Hon'ble MR. T. BUTLER.

The Hon'ble MR. S. L. MADDOX, C.S.I.

The Hon'ble MR. G. W. KÜCHLER, C.I.E.

The Hon'ble MR. L. F. MORSHEAD.

The Hon'ble SIR FREDERICK LOCH HALLIDAY, KT., M.V.O., C.I.E.

The Hon'ble MR. J. G. CUMMING, C.I.E.

The Hon'ble MR. C. H. BOMPAS.

The Hon'ble Mr. C. E. A. W. Oldham.

The Hon'ble Mr. H. McPherson.

The Hon'ble Babu Janaki Nath Bose.

The Hon'ble Maharaja Bahadur Sir Prodyot Kumar Tagore, Kt.

The Hon'ble Sir Frederick George Dumayne, Kt.

The Hon'ble Kumar Sheo Nandan Prasad Singh.

The Hon'ble Babu Bhupendra Nath Basu.

The Hon'ble Rai Sita Nath Ray Bahadur.

The Hon'ble Sir Bijay Chand Mahtab, K.C.S.I., K.C.I.E., I.O.M., Maharajadhiraja Bahadur of Burdwan.

The Hon'ble Babu Kirtanand Sinha.

The Hon'ble Raja Rajendra Narayan Bhanja Deo.

The Hon'ble Babu Deba Prasad Sarbadhikari.

The Hon'ble Mr. J. G. Apcar.

The Hon'ble Mr. Norman McLeod.

The Hon'ble Mr. F. H. Stewart, C.I.E.

The Hon'ble Mr. Golam Hossein Cassim Ariff.

The Hon'ble Mr. Saiyid Wasi Ahmad.

The Hon'ble Maulvi Saiyid Muhammad Fakhr-ud-din.

The Hon'ble Maulvi Saiyid Zahir-ud-din.

The Hon'ble Rai Sheo Shankar Sahay Bahadur

The Hon'ble Mr. Madhu Sudan Das, C.I.E.

The Hon'ble Rai Baikuntha Nath Sen Bahadur.

The Hon'ble Babu Mahendra Nath Ray.

The Hon'ble Khan Bahadur Maulvi Sarfaraz Husain Khan.

The Hon'ble Mr. Dip Narain Singh.

The following motion was, by leave of the President, withdrawn :—

Clause 143.

*230. If motion No 224 be not carried, the Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, to move that for the words "either yearly or at any other intervals of time" in lines 2 and 3 of clause 143 (*1*) (*a*), the following be substituted, namely :—

"twenty years after the final publication of the record-of-rights in that area, or, on every subsequent occasion, at an interval of 15 years"

231. The Hon'ble Rai Sheo Shankar Sahay Bahadur moved that the words "at reasonable intervals of time not less than at an inverval of five years" be substituted for the words "either yearly or at any other intervals of time" in lines 2 and 3 of clause 143 (*1*) (*a*).

He said:—

"Sir, I think that the proposal which I make is a reasonable one. I submit, Sir, that to give power to correct the records yearly is ridiculous, both landlords and tenants will have no peace If it should be undertaken at all, it should be undertaken at intervals of five years. I therefore beg to move this amendment."

The Hon'ble Mr. Kerr said :—

"I have already given reasons why it is necessary to have fairly elastic provisions in this chapter, particularly in regard to the periods at which revision of these land records is desirable. As I said on Saturday we are at present without sufficient experience of revision operations to lay down what would be a suitable period at which they should be carried out, and I have also explained that it is highly probable that that period will differ in different parts of the country, where different conditions prevail, and also possibly regarding different portions of the record. The record of proprietary rights must be kept fairly well up to date, whereas the record of tenants' interests can be left for a longer time without revision. I also said that the Hon'ble Member in charge of the Bill would move an amendment to this clause which would leave it open to Government to authorise the revision of records at such periods as may be deemed suitable hereafter. This provision of the Bill must be fairly elastic and it would be unwise to tie ourselves down by the law to any specific period of time. I therefore oppose the amendment."

The motion was then put and lost.

The following motions were, by leave of the President, withdrawn :—

232. If motion No. 227 be not carried, the Hon'ble Maulvi Saiyid Muhammad Fakhr-ud.din to move that the words "at an interval of fifteen years or more" be substituted for the words "either yearly or at any other intervals of time" in lines 2 and 3 of clause 143 (*1*) (*a*).

233. If motion No. 228 be not carried, the Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "at intervals of at least fifteen years" be substituted for the words "either yearly or at any other intervals of time" in lines 2 and 3 of clause 143 (*1*) (*a*).

* This and the following numbers refer to the order of the amendments in Annexure A to the List of Business.

The Hon'ble Mr. H. McPherson said :—

"With your permission, Sir, I desire to move a small amendment to sub-clause (*i*) (*a*) of clause 145. I propose that for the words "either, yearly, or at any other intervals of time" the following words be substituted—

'at such intervals of time as it may deem suitable.'

"The insertion of 'yearly' as an alternative is held to be objectionable by some Hon'ble Members who are willing that the chapter should be applied at such intervals of time as may appear to Government to be suitable on a consideration of the results of the experimental work, but do not wish to express any sort of approval of the system of annual maintenance. I appreciate the force of this view, and can see no objection, to the proposed alteration which I recommend for the Council's acceptance."

The amendment was put and agreed to.

Clause 144.

234. If motion No. 229 be not carried, the Hon'ble Mr. M. S. Das to move that the words "be liable to pay a fine not exceeding fifty rupees, and, for further disobedience, shall be subject to the penalties provided by Chapter X of the Indian Penal Code" be substituted for the words "be subject to the penalties provided by Chapter X of the Indian Penal Code" in lines 3 and 4 of clause 144 (*3*).

Hon'ble Mr. Das said:—

"Sir, may I be permitted to modify the above amendment? At the suggestion of the Hon'ble Member in charge of the Bill, I propose that after the words 'for disobedience thereof' in line 3 of clause 144 (*3*) the following words be inserted, viz, 'be punishable with fine which may extend to Rs. 50 and shall in the event of subsequent disobedience,' etc."

The Hon'ble Mr. H. McPherson said:—

"I accept the amendment in this modified form."

The amendment was put in the altered form and agreed to.

The following motion was, by leave of the President, withdrawn:—

Clause 148.

235. If motion No. 228 be not carried, the Hon'ble Raja Ra Narayan Bhanja Deo to move that the words "or wa menced more than two years before the date of the application, and the landlord has not, during that period, instituted a suit to eject the tenant from the land so reclaimed, or unless such suit has been dismissed" in lines 3 to 8 of proviso (*ii*) of clause 148 (*1*) be omitted.

The Hon'ble Babu Hrishikesh Laha being absent, the following amendments, standing in his name were held to be withdrawn:—

236. If motion No. 225 be not carried, the Hon'ble Babu Hrishikesh Laha to move that the word "twelve" be substituted for the word "two" in line 4 of proviso (*ii*) of clause 148 (*1*.)

237. If motion No. 226 be not carried, the Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the word "six" be substituted for the word "two" in line 4 of proviso (*ii*) of clause 148 (*1*).

238. If motions Nos. 225 and 236 be not carried, the Hon'ble Babu Hrishikesh Laha to move that the word "six" be substituted for the word "two" in line 4 of proviso (*ii*) of clause 148 (*1*).

239. The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO moved that the word "four" be substituted for the word "two" in line 4 of proviso (*ii*) of clause 148 (*1*).

He said :—

"Two years is too short a time to ascertain and detect unauthorised cultivation and institute suit for ejectment. The landlord gets 12 years under the ordinary law. Why should this be curtailed ? The retention of this short period will encourage clandestine cultivation"

The Hon'ble MR. H. MCPHERSON said :—

"I am unable to accept this amendment for the reasons which I fully explained when dealing with clause 54A. The ordinary period of limitation prescribed in clause 54A is four years. That applies to areas in which no maintenance of records is carried out. Where records are regularly maintained and maps are revised at intervals of three or five years, the landlord can have no practical difficulty in detecting even the smallest encroachments on waste land, if he takes a little trouble. If he wants to sue for the ejectment of persons who are already his tenants from additional lands reclaimed by them, he may reasonably be expected to take action within two years. The provisions of the clause, it will be borne in mind, apply only to persons who are already tenants. When a limit of two years has been prescribed for the jungly tracts of Chota Nagpur, two years is surely not too short for densely-populated and highly cultivated Orissa, with a system of maintenance or periodical revision in force.

Permanently-settled areas are exempted from the operation of this special provision, and are left to the operation of clause 54A, because they were not concerned with the bargain that was struck with temporarily-settled proprietors and obtained no benefit from the private land concession."

The motion was then put and lost.

The following motion was, by leave of the President, withdrawn :—

Clause 151.

240. If motion No. 229 be not carried, the Hon'ble Mr. M. S. Das to move that the words "but the previous entry shall be admissible as evidence of the facts existing at the time such entry was made" in lines 4, 5 and 6 of the proviso to clause 151 (*2*) be omitted.

Clause 153.

241. The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO moved that the words "relating to a rent settled under this Chapter" in lines 2 and 3 of clause 153 be omitted.

He said :—

"Sir, appeal is confined only to an order relating to settlement of rent. Other disputes affecting right and title may arise and no provision for appeal has been made against orders deciding such disputes. In Chapter XI there is provision for appeals and civil suits. In the absence of any distinct reference to Chapter XI, this Chapter taken by itself will be construed to mean a complete codification so far as proceedings relating to maintenance of records are concerned. This will seriously prejudice the parties who will have no remedy against orders deciding disputes relating to title."

The Hon'ble MR. KERR said:—

"The effect of the Hon'ble Member's amendment would be to make all he orders passed by an officer revising land records appealable to higher uthorities. This would destroy one of the main objects of the Chapter XII hich is to make the procedure in revising land records as simple as is onsistent with efficiency. We are providing an appeal against an order ettling a rent as that is an important matter, but as regards the rest of the perations under this chapter they merely result in a record in which the ntries are presumed to be correct until the contrary is proved. The real ppeal against them will come when those entries come before the Court, or are aken advantage of in some other way. In the case of 90 per cent. or more f the entries they will be left as they stand, and there is no object in ncouraging people to appeal about them. In the case of the remaining 10 *er cent.* if there is any dispute, the matter may very well be left over until he necessity arises to come before a proper Court. To allow an appeal would nnecessarily complicate the procedure and lengthen the operations and add o the expense and trouble caused to the agricultural community. I must herefore oppose this amendment."

The motion was then put and lost.

Clause 162.

242. The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO moved that the word "*nij-chas*" be inserted after the word "*nij-jote*" in clause 162 wherever it occurs.

He said:—

"Sir, I beg to propose that the word *nij-chas* be added after the word *nij-jote*. *Nij-chas* is used in many permanently-settled estates to refer to proprietor's private lands in the same sense as *nij-jote* or *khamar*. Unhappily the distinction between *nij jote* and *nij chas* was made in the temporarily-settled area at the time of the last Revenue Settlement. Clause 163(*a*) in the Bill provides that in the temporarily-settled area *nij-chas* will be included in the category of proprietor's private lands, but no such provision has been made for the permanently-settled area. There has so far been no distinction between *nij-jote* and *nij-chas* lands in the permanently-settled area, though my opinion is that such distinction should not have been made even in temporarily-settled areas, the local meaning attached to *nij-chas* lands should have been enough to record them as proprietor's private lands.

If the word *nij-chas* is added here, it will not affect the temporarily-settled area. Sub-clause (*1*) of clause 163(*a*) limits the *nij-chas* area to become proprietor's private land and sub-clause (*2*) restricts that no further *nij chas* areas shall be held as proprietor's private land.

As to the permanently-settled area, if the word *nij-chas* be not included in this clause, large areas which are actually proprietor's private lands will be excluded just because they are called *nij-chas*. In many of the permanently-settled areas no record of rights has been prepared and so there has been no record of *nij-chas* lands in accordance with the principles applied in the last settlement. *Nij-chas* lands in the permanently settled areas need not be the same as the *nij-chas* lands of the temporarily-settled area. The latter is recorded after inquiry by the Settlement Officer, but the former in some cases is only a name for a proprietor's private lands."

The Hon'ble MR. H. MCPHERSON said:—

"Sir, it will save the time of the Council if I intervene early in the debate on this amendment and explain to Hon'ble Members what is the effect of the proposals that have been incorporated in the Bill on the subject of proprietors' private lands and what the intentions of Government are. I have already explained the position with considerable fullness in my introductory speech.

Cultivated lands in the direct possession of proprietors may be of two kinds. They may either be the old demesne landswhich were set apart for the maintenance of proprietors and are referred to in the old Regulations as *nankar*, *khamar*, *nij-jote*,—see for example sections 37-40 of Regulation 8 of 1793,—together with such lands as have come by local usage to be regarded as belonging to the same category, or they may be lands which have belonged to what may be called the raiyati stock and have come into the hands of proprietors by purchase, abandonment and the like. Varying names are used in different localities to indicate the two classes of lands. In the Bihar settlement, the two classes are distinguished by using the word *zirat* for the privileged class and the words *bakasht malik* for the non-privileged class. In Orissa the words chosen at last settlement to mark the distinction were *nij-jote* and *nij chas*. It was perhaps a little unfortunate to use the word *nij-chas* because it is so like in etymology to *nij-jote*, that people confuse the two in ordinary conversation. It might have been better to have used the work *hal chas* which was at one time thought of as an alternative. The point however is not of importance. So far as the result is concerned, the classes might equally well have been distinguished by the labels 'X' and 'Y', 'X' signifying privileged land and 'Y' non-privileged. The important thing was the distinction in significance. The true *nij-jote* is privileged in this way that it may be let out to village raiyats for a term of years or from year to year at any rent the parties may agree upon, without any danger of the raiyat acquiring occupancy rights. Subject to contract, the proprietor can take it back at any time, and can vary the rent of the cultivator as he pleases. The non privileged land is on the same footing as the privileged, so long as it remains in the proprietor's own cultivation, but if he lets it out to village raiyats, he loses his absolute control over it. He may let it out to begin with at any cash rent he chooses, but after the raiyat has acquired occupancy rights, the rent cannot be varied except in accordance with the Act, and if the initial rent is a produce-rent, the raiyat may apply for its commutation under section 40 of the Act It thus becomes an object with the proprietor to keep as much land as he possibly can in the privileged category. He has more freedom of action with regard to it. He can let it all out at a rack-rent and need not be hampered by the inconvenient restrictions of the tenancy laws. It is for this reason that in Bihar, proprietors claim all their land, regardless, of its history, as *zirat* or *khudkasht*. It is for this reason that the champions of the Orissa zamindars claim that there is no distinction between *nij-jote* and *nij-chas*, and that the Settlement Department made a great mistake in drawing such a distinction 15 years ago. Sir, the Settlement Department made no mistake in this matter at the last settlement, and this is not a case in which *ex*-Settlement Officers have come forward with palliative measures to redeem or conceal the effects of previous errors. When Act X of 1859 was in force throughout the Province, Orissa and Bengal were on the same footing as regards private lands. The words used in section 6 of the Act—"But this rule does not apply to *khamar*, *nij-jote* or *sir* land belonging to the proprietor of the estate or tenure and let by him on lease for a term of years or year by year"—applied equally to both. Before the last revenue settlement of Orissa took place, the Bengal Tenancy Act had been passed. It sought to put an end to the controversy about *khamar* lands by a compromise which was favourable to the landlord. It said—we will give you not only the old demesne lands and lands regarded as such by local usage, but also lands now in your possession which you have given proof of your intention to cultivate yourselves, by keeping them in your continuous cultivating possession for more than 12 years. The new Act had not been extended to Orissa when the settlement came on, but it was thought desirable to work in the spirit of its provisions in making the distiction between the privileged and the non-privileged area.

Working on this basis the officers of settlement recorded about 40,000 acres as the *nij-jote* of proprietors and proprietary-tenureholders, and about 130,000 acres as their *nij-chas* or non-privileged. The whole subject is discussed at page 201 of Mr. Maddox's Settlement Report, and I will here point out

that I made a mistake in my speech of 9th January when I said that under the influence of the Bengal Tenancy Act all the lands in possession of proprietary tenureholders were classed as *nij chas*. What was in my mind was that as the law stands, that is, since it was held by the High Court that the extension of the settled raivat sections of the Bengal Tenancy Act to Orissa had repealed section 6 of Act X of 1859, all the private lands of proprietary tenureholders are legally devoid of the special privilege that attaches to proprietor's private lands. Both at the revenue settlement and at the revision settlement, the old *nij-jote* lands of sub-proprietors have been scrupulously recorded as such, and the passing of this Bill will merely confer on them the protection which it is desirable to accord them. That the sub-proprietors have lost nothing in actual practice may be gathered from the fact that against 4,860 acres of recorded *nij-jote* of sub-proprietors in Balasore and Cuttack, there is now a recorded *nij-jote* area of 4,830 acres.

To return however to the aggregate figures:—

Against the 40,000 acres of *nij-jote* and 130,000 acres of *nij-chas* recorded at last settlement, we have now 10 years later in the revision settlement recorded 38,500 acres of *nij jote* and 139,000 acres of *nij chas*. That is, the proprietary classes retain 96 per cent. of their privileged area and have increased their non-privileged lands by 7 per cent., the whole amounting to about one eleventh of the total cultivated area of Orissa. During the revision settlement there was naturally a good deal of attention directed towards the non-privileged area. It was open to any raiyat to whom in had been let out for cultivation to claim it as his raiyati land and it says much either for the affection which subsists between landlord and tenant in Orissa or for the power which the former has over the latter that compartively few claims were made. We have a shrewd suspicion that the great bulk of the privileged and non-privileged area alike is cultivated through tenants holding on produce-rents. When the Hon'ble Mr. Maddox made his enquiries in 1909, a good deal of representation was made to him regarding the *nij chas* lands. It was urged that the temporarily-settled proprietors and sub-proprietors of Orissa were comparatively poor men, that they were increasing in numbers, that they depended on their *nij-jote* and *nij-chas* lands for their subsistence and for the punctual discharge of their revenue demands, and that they should be treated more generously in this matter than the permanently-settled proprietors of Bengal. Government had already been considering the desirability of protecting the old *nij-jote* lands of sub-proprietors, which, as the law stood, were not protected, and when in response to these local representations, Mr. Maddox came forward with a proposal that the privileges of *nij-jote* land should be attached to all that portion of the recorded *nij-chas* of the last revenue settlement which is still found to be in the cultivating possession of proprietors and sub-proprietors, Government considered the proposal sympathetically and recommended it for the acceptance of the Supreme Government. The proposal has been accepted and embodied in the Bill, and as I have already explained in my opening speech, it will mean the transfer of about one lakh of acres from the non-privileged to the privileged area. The proposal was received enthusiastically, as one can well understand, by the proprietary body in Orissa which had never hoped for this good fortune. Its result will be that the proportion of privileged land will be higher in Orissa than in any other part of Bengal.

When the Bill was circulated to the Local Associations, they, of course, approved of the proposal, but, note the strangeness of human nature, having got far more than they could ever have hoped for, they began to ask for more. And so we have had proposals that the concession should be extended to all classes of tenureholders, to *basiaftidars* and *bahal tenkidars* and *kharida jamabandidars* and so forth. We have been asked to apply it to all the recorded *nij-chas* of the last revenue settlement, regardless of the fact that raiyati rights may have accrued in portions of that area, in other words to confiscate rights that have grown up under the law and to ignore the originally proposed test

of continuous cultivating possession. We have even been asked to insult ourselves by making a solemn admission in this legislative measure that our former *nij-chas* record was all a huge mistake. This is Government's return for offering to the Orissa proprietors a concession that is immensely greater than has been allowed to proprietors in any other part of Bengal. The return is such as almost to make Government repent that the concession was ever proposed.

With these words I would ask the Hon'ble Mover and other Hon'ble Members who propose to modify clauses 162 and 163A to reconsider their position and withdraw their amendments. None of them with one exception are acceptable to Government, which has already offered the maximum possible and does not mean to budge from the position that has been taken up in the clauses as they came from Select Committee.

"The exception to which I refer is amendment No. 250, which will be accepted by Government in a modified form. The object of this amendment is to secure that the results of the concession will not be dissipated by anything that may have occurred since the final publication of the record. Whatever transactions may have occurred will be considered as having reference to privileged land. It is right that this should be allowed, because the concession has been before the public of Orissa for at least three years. As a matter of fact, it will not have any very material effect, because the proprietors will take care that no claims are made by under-tenants in respect of lands entitled by the new provision to be *nij-jote*.

"As regards this particular amendment now under consideration, I would only remark that I cannot accept the proposed addition of *nij-chas* to the enumeration of the names by which privileged lands in the permanently-settled areas are known. It would be dangerous to make the addition because the word *nij chas* has been earmarked in Orissa to denote the unprivileged area. The Hon'ble Mover need be under no apprehension that any land which is by origin or custom entitled to be placed in the category of proprietor's private land will be excluded from that category, because the local people may be in the habit of calling it *nij-chas*. The framers of the record will look to the history of the land and not to its name only."

The motion was then put and lost.

The following motions were, by leave of the President, withdrawn :—

243. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words and figures "26th July, 1911" be substituted for the words and figures "21st August, 1906" in lines 4 and 5 of clause 162 (*e*).

244. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that clause 162 (*3*) be omitted.

Clause 163A.

245. The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, to move, that, for clause 163A., the original clause 163 of the Bill, as introduced in Council, be substituted.

246. If motion No. 245 be not carried, the Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, to move that the words "In any area" be substituted for the words "In temporararily-settled estates" in line 1 of clause 163A (*1*).

247. The Hon'ble Mr. M. S. Das to move that the word "*nij-jote*" be inserted before the word "land" in line 1 of clause 163A (*1*) (*b*).

248. The Hon'ble Mr. M. S. Das to move that the words "by mistake" be inserted after the word "recorded" in line 1 of clause 163A (*1*) (*b*).

249. If motion No. 248 be carried, the Hon'ble Mr. M. S. Das to move that the words "by mistake" be inserted after the word "recorded" in line 5 of clause 163A (*1*) (*b*).

250. The Hon'ble Mr. M. S. Das to move that the word "and" be omitted from the end of clause 163A (*1*) (*a*) and inserted at the end of clause 163 (*1*) (*b*), and that the following be added as sub-clause (*c*), namely:—

"(*c*) this sub-section shall be deemed to have been in force at the time when the records-of-rights specified in clause (*b*) were published."

The Hon'ble Mr. Das said:—

"I beg permission to move amendment 250 (above) in the following modified form:—That the following sub-clause (*1a*) be inserted after sub-clause (*1*) in clause 163A, namely:—

"(*1a*) Any land recorded as *nij-chas* in a record-of-rights finally published between the years 1906 and 1912, which falls within the category of proprietor's private land under the provisions of clause (*b*) of sub section (*1*), shall be deemed to have become proprietor's private land with effect from the date of the final publication of such record."

The Hon'ble Mr. H. McPherson said:—

"I accept this amendment."

The latter motion was put and agreed to.

The following motions were, by leave of the President, withdrawn:—

Clause 164.

251. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "under section 13A, 13B or 13C" in proviso (*ii*) (*a*) of clause 164 be omitted.

252. The Hon'ble Rai Sheo Sankar Sahay Bahadur to move that proviso (*ii*) (*c*) of clause 164 be omitted.

The Hon'ble MR. H. MCPHERSON said:—

"With Your Honour's permission I beg to move here the amendment which is numbered 12A on the Separate List, which you have already permitted me to move, viz.".

12A. That the following be substituted for proviso (*ii*) (*a*) to clause 164 (*c*), namely:—

"(*a*) registered under section 13A, 13B, 13C or under any law previously in force, or".

The motion was put and agreed to.

The following motion was, by leave of the President, withdrawn:—

253. The Hon'ble Mr. M. S. Das to move that the words "whether tenure-holder or raiyat" be inserted after the word "*bajaftidar*" in line 1 of proviso (*ii*) of clause 164 (*2*).

New Clause 201A.

254. The Hon'ble SIR BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR, Burdwan, in the absence of the Hon'ble Babu Hrishikesh Laha, moved that the following clause be added after clause 201:—

"201A. All suits and proceedings under this Act shall be instituted and tried at a place to be fixed, with the approval of the local Government, at the head-quarters of a district or of a sub-division of a district, as the case may be, and to be known as the court-house of the Collector."

Place of suing.

He said:—

"It is well-known what hardship and inconvenience the parties have to undergo when they have to attend the officer on tour from camp to camp, and it is therefore absolutely necessary that the form of administering justice must be at a fixed place. People who are not litigants themselves can form no conception of the trouble to which the parties are subjected. If the Bill had provided for the trial of rent suits by the Civil Court, this amendment would not have become necessary, but as all these suits will be tried by Revenue Courts, we cannot but insist that some provision should be made for their trial at head-quarters of districts or sub-divisions, even though it involves increased expenditure by the appointment of more officers. It often happens that a party with a just case has to come to a compromise because either he is not rich enough or does not like to incur the trouble and inconvenience of a long journey in the interior from his place of abode It sometimes leads to failure of justice. The officer on tour is occupied with many matters, and he cannot therefore bestow that undivided attention which is necessary to form a calm judgment. This is a real grievance of the people which should be redressed. The necessity for this amendment is therefore obvious."

The Hon'ble Mr. Kerr said :—

"I cannot agree to the amendment proposed by the Hon'ble Member. He has told us in his speech of the great trouble and difficulty which landlords have in going to remote places in the mufassal to have their cases tried, but we have heard very little regarding the great trouble and expense which raiyats experience in coming into the head-quarters of the district or subdivision in order to have their cases tried. I think that the expense in one case may fairly be taken to be counterbalanced by the expense in the other, and that this Council need not attempt to decide between the two claims. Apart from this question of expense, which is by no means the most important, it is clear that on the merits of the case by far the greater number of disputes relating to land can most easily and expeditiously be settled on the spot. Unfortunately, the staff at the disposal of Government is not at present such as to enable all suits between landlord and tenant to be tried in the village concerned. The great majority of such cases must, I fear, continue to be tried at the head-quarters of districts and subdivisions, but I look forward to a time when the mufussal agency at the disposal of Government will be strengthened, and a much greater number of land suits, than at present, will be tried on the spot. I regard the advantages of this measure as infinitely greater than any disadvantages which the landlords or their pleaders may be put to in a few isolated cases. All difficult cases raising points of law, in which legal advice is necessary, would as a rule be tried at head-quarters. The motion of the Hon'ble Member would entirely destroy the possibility of reaching the ideal to which we look forward, and I trust the Hon'ble Member will not press his motion, but will leave it as at present to the discretion of the courts, subject to the control of superior authority to decide the place at which suits relating to land should be tried, having regard to all the circumstances of the case and the general convenience of the parties."

The motion was then put and lost.

Clause 207.

255. The Hon'ble Mr. M. S. Das moved that the words "where an appeal is not allowed" be substituted for the words "whether an appeal is allowed or not" in line 4 of clause 207 (*i*).

He said :—

"Sir, the clause as it is in the Bill, says:—

> 'the rules in rule 13 in Order XVIII in the first Schedule to the Code of Criminal Procedure, 1908, for recording the evidence of witnesses shall apply, whether an appeal is allowed or not.'

That rule says in cases in which an appeal is not allowed, the Judge shall make a memorandum of the evidence. But, of course, in cases where an appeal is allowed, a regular record of evidence should be kept. Here it is said, that whether a case be appealable or not there should be no regular record of evidence. Considering, Sir, that this evidence is to be recorded and these suits are to be tried by Deputy Collectors, whereas the Civil Procedure Code applies to the Civil Court, is it not desirable that this privilege, that is to say, making memorandum only and not recording evidence, should be given only in those cases where no appeal is allowed? Of course, where an appeal is allowed, evidence ought to be recorded in order to place the Appellate Court in a position to judge whether the judgment is correct or not. I simply ask what the Criminal Procedure Code has enacted, and I hope the Hon'ble Member will not oppose it."

The Hon'ble Mr. H. McPherson said :—

"I regret, Sir that I cannot accept this amendment, because, if it were accepted, it would destroy much of the benefit that is derived from the special procedure provided for the trial of rent-suit cases. It is desirable, alike in the interests of landlords and tenants, that the disposal of rent-suits should be expeditious, and that proceedings should not be prolonged unduly. In the vast majority of cases, the issues are of the simplest nature.

This is especially the case in an area that is fully equipped with a record-of-rights. Under the Bill, as it stands, it will be the duty of the trying officer to record all the substance of the evidence in writing. And this should be sufficient for the purposes of appeal. An officer who prepares his records in a perfunctory manner will incur the displeasure of the appellate court, and may have his cases remanded. We have not heard that the working of the corresponding provision in the Bengal Tenancy Act has caused any injustice or inconvenience in Bengal, where it has been in force for 30 years, and I do not see why we should anticipate any such in Orissa.

"Moreover, if reference be made to section 60 of Act X of 1859, it will be seen that no innovation is being introduced.

"Section 60 says regarding the examination of the parties, that the substance of the examination shall be reduced to writing in the vernacular language of the Collector and filed with the record.

"I would also note that nearly all rent-suit cases are appealable, for the Collector tries very few himself, and that the practical effect of the amendment would be to destroy the whole of the value of the special provision."

The motion was then put and lost.

Clause 208.

256. The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD DIN moved that the following be added at the end of clause 208, namely :—

> "Provided that the plaintiff shall be entitled to recover the entire costs of the suit incurred by him, and that the decree shall specify the exact amount of money and costs separately payable to the plaintiff and the *pro formâ* defendant."

He said :—

"This clause is similar to clause 148(*a*) of the Bengal Tenancy Act, and this new section was added in the year 1907. Since then, some little difficulty has been sometimes felt when the plaintiff brings a suit and prays for the recovery of rent, and during the trial some of the *pro formâ* defendants put in a written statement asking the Court to pass a decree for their share of the rent, separately. Then sometimes he gets a decree for his share of the rent, *plus* the costs. Now, I simply want that, if the special clause be added towards the end of this clause, the specific decree may be passed in favour of the plaintiff, or in favour of the *pro formâ* defendants, and also the proportionate amount of costs incurred by the plaintiff and by the *pro formâ* defendant. In some cases the plaintiff would be entitled to get the entire costs, although he would get a decree for his share of rent only. Suppose some of the plaintiffs are absent, the whole costs will have to be realized by the plaintiff because he has incurred the entire costs, although he will get the decree for his share of the rent. With the object stated, Sir, I propose that this provision may be added towards the end of clause 208."

The Hon'ble MR. CHAPMAN said:

"Sir, I cannot advise the Government to accept this amendment; first, on the general principle that it is unwise to legislate on the subject of costs. It is always desirable to leave the question of costs to the discretion of the courts. There are some cases in which a court may consider that a plaintiff is not entitled to have his costs, either with reference to the manner in which he has conducted his suit, or with reference to some other circumstances. That is the general objection. Also, I think that the Hon'ble Member has not quite understood the clause. The clause merely contemplates a decree for the plaintiff's share of the rent. The plaintiff shall have such a decree that there cannot be any amount payable to anybody but the plaintiff. I think he has misunderstood the clause; and, further, the clause only applies to cases in which it is impossible to ascertain what is due to the other co-sharers, so there cannot be any decree for any amount in favour of the co-sharers. I therefore advise that the Council do not accept this."

The following motions were, by leave of the President, withdrawn :—

Clause 219.

257. The Hon'ble Mr. M. S. Das to move that the words "whether tenure-holder or raiyat" be inserted after the word "*bajiaftidar*" in line 2 of clause 219 (*1*)(*c*).

Clause 226.

258. The Hon'ble Mr. M. S. Das to move that the words "*bajiafti* tenancy" be substituted for the words "*bajiaftidar*" in line 2 of clause 226 (2) (*a*).

Clause 227.

259. The Hon'ble Mr. M. S. Das to move that the word "raiyat" be inserted after the word "*bajiaftidar*" in line 2 of clause 227 (*1*).

Clause 228.

260. The Hon'ble Mr. M. S. Das to move that the word "raiyat" be inserted after the word "*bajiaftidar*" in line 2 of clause 228 (*1*).

Clause 231.

261. The Hon'ble Mr. M. S. Das to move that the word "*bajiaftidar* raiyats" be substituted for the word "*baiaftidars*" in line 2 of clause 231 (*3*).

Clause 232.

262. The Hon'ble MR. M. S. DAS moved that the words "or the right of co-sharer landlords" be inserted after the words "decree-holders' right" in line 1 of clause 232(*2*).

He said :—

"I think there has been a mistake on my part, and I understand that there will be an amendment proposed to this."

The Hon'ble Mr Chapman said :—"I am prepared to accept this in a different form. I move that instead of amendment No. 262 (above) the following be accepted namely : That after the words and letter 'clause (*a*)' in sub-section (*2*) thereto, insert the words and figure 'of sub-section (1)' or the amount of any payment contemplated by proviso (*i*) or proviso (*ii*) of the said sub-section."

The motion was put and agreed to.

The following motions were, by leave of the President, withdrawn :—

263. The Hon'ble Mr. M. S. Das to move that the words "clause (*b*) and" be substituted for the word "clause" in line 2 of clause 232(*2*).

Clause 241.

264. The Hon'ble Raja Rajendra Narayan Bhanja Deo to move that the words "transfer or" in line 1 of clause 241 (*3*) (*d*) be omitted.

265. The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO moved that the words "custom or" be inserted before the words "local usage" in lines 2 and 3 of clause 241 (*3*) (*d*).

He said :—

"I have changed the words 'customs and' in the original amendment to 'customs or' in which form, I think, it will be accepted by the Hon'ble Member in charge."

The Hon'ble MR. MCPHERSON said :—

"I accept it in the modified form, Sir."

The motion was put and agreed to.

266. The Hon'ble RAJA RAJENDRA NARAYAN BHANJA DEO moved that the words "an occupancy-raiyat" be substituted for the words "a tenant" in line 1 of clause 241 (*3*) (*g*).

The Hon'ble MR. MCPHERSON said :—

"I accept it, Sir, because occupancy-raiyats are the only tenants who can apply for commutation."

The motion was put and agreed to.

Clause 240.

The following motion was, by leave of the President, withdrawn.

267. The Hon'ble Sir Bijay Chand Mahtab, Maharajadhiraja Bahadur of Burdwan, to move that the following proviso be added to sub-clause (*1*) of clause 245, *viz* :—

"Provided that this sub-section shall not apply to a non-resident raiyat who holds his homestead and holding under different landlords."

He said :—

"I understand, Sir, that no difficulty has arisen in Orissa, and as this is a matter which I really proposed because some difficulty has arisen in Bengal, I beg to withdraw it."

The motion was then, by leave of the President, withdrawn.

The following motion was, by leave of the President, withdrawn.

Schedule IV.

268. The Hon'ble Rai Sheo Shankar Sahay Bahadur to move that the words "three years" be substituted for the words "one year" in Schedule IV, article 2 (*b*) (*ii*).

5. The Hon'ble Mr. H. McPherson moved that the Secretary be directed to re-number the clauses and sub-clauses of the Bill, in consecutive order, and to make corresponding alterations in all cross-references thereto.

The motion was put and agreed to.

6. The Hon'ble Mr. H. McPherson also moved that the Bill, as settled in Council, be passed.

He said :—

"I have now the honour to move, Sir, that the Orissa Tenancy Bill, as amended in Council, be passed. I congratulate the Council on the conclusion of the deliberations which have engrossed its attention for four days, I congratulate it on the patience, good temper and, on the whole, fairness of mind that have been displayed throughout the debates. We have perhaps exchanged a few hard knocks in the course of our discussions but no bones have been broken, and we part good friends. I regard the Bill as a great legislative achievement which settles many vexed questions of law and procedure, and restores order and harmony to the agrarian economy of Orissa. It gives to that portion of the province the advantages of a self-contained agrarian code, and puts an end to many existing causes of dispute and unrest and strife. Many hard things have been said of the Bill in this Council, and there has also been some attempt to prejudice the public mind regarding it through the public press. We have been told that it is revolutionary, where it merely embodies existing custom. Insinuations have been made that it is the work of ex-settlement officers who recognize their own mistakes, and are anxious to remove them from observation. The debates have shown that no grounds exist for this

insinuation. But the criticism which has least foundation of all, is that the Orissa public or the Council has been rushed by this legislation, and that public opinion has been stifled. I would ask the Council, in this connection, to compare the history and progress of the Bill with those of the Chota Nagpur Tenancy Act, which was an equally long measure and supplied a complete agrarian code to a Division which is even more divergent from the rest of Bengal than Orissa is. The Chota Nagpur Tenancy Bill, after being before the public for twelve months during which it was considered in local committees, was introduced into Council in July 1908. It was considered in Select Committee for three weeks, and was passed at a single sitting of the Council, only five weeks after it was first introduced. The Orissa Bill, on the other hand, has been before the Orissa public for more than three years. It was introduced in Council about eight months ago, circulated to local bodies, considered in Select Committee for nearly two months, and has now engaged our attention in Council for four long sittings.

Orissa will shortly be included within the boundaries of the new Province of Bihar and Orissa. It is asserted that the administrators of the new Province should have been consulted regarding the Bill. I am in a position to state that His Honour Sir Charles Bayley has been consulted regarding the Bill. The Bill and all the papers connected with it were laid before His Honour, and he agreed that it should be passed by this Council. Sir, as one who has had close connection with Orissa for ten out of twenty years' service, and is likely to have some share in the future administration of Orissa, I personally consider it a great cause for thankfulness that the legislative proposals of the last three years have been brought to fruition before this Council is dissolved, and that Orissa has had the benefit of all the wisdom and experience which remain behind in Bengal. To you, Sir, in especial, we owe a great debt of gratitude for the fairness and patience with which you have presided over our deliberations and for the guidance and assistance which your personal knowledge of Orissa has enabled you to bring to bear on our proceedings. With these words, Sir, I move that the Bill, as amended in Council, be passed."

The Hon'ble Sir BIJAY CHAND MAHTAB, MAHARAJADHIRAJA BAHADUR of BURDWAN said:—

"Your Honour: before this Bill is passed into law, I feel I ought to say a few words. First of all, let me congratulate the Government on having at last got a complete agrarian code for Orissa, and I hope that the new Act will ameliorate the condition of both the landlords and tenants in Orissa. I regret that the Government should have insisted upon the inclusion of the maintenance of Land Records Chapter in the Bill. Certain innovations have been introduced in this rent law, which do not exist in the Bengal Tenancy Act, and I apprehend that before very long we shall have some of the new provisions in this Bill thrust on us in Bengal. The maintenance of Land Records Chapter, the chapter dealing with communal rights and the express provision of the raiyati transfers of occupancy-rights will, if introduced into Bengal, have even more far-reaching effects than in the present case; but we must reserve our comments and judgments until the psychological moment arrives.

I take this opportunity of warmly thanking Messrs. McPherson and Kerr for the invaluable help and unfailing courtesy shown to us members of the Select Committee, during the meetings of that Committee. Although we shall have Mr. Kerr with us, I am sincerely sorry my friend, Mr. McPherson, is going over to Bihar, for I have a warm regard for him and shall miss him here: but I hope he will have a successful career in Bihar. The President of our Select Committee, the Hon'ble Mr. Slacke, is going to retire from the service, and as I have had the honour of his friendship, I cannot help saying how sad I feel that another old friend and well-wisher is leaving the province. Our sincere thanks are also due to Mr. Watson, the Secretary of this Council. His help in the Select Committee was invaluable; and I think we, one and all, non-official members of the Select Committee on the Orissa Tenancy Bill, have reasons to be particularly grateful to Mr. Watson for the printed proceedings

of every day's meeting which he so kindly got ready for our discussion and reference, and which we found most useful."

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR said:—

"Sir, first of all I beg to congratulate the Hon'ble Member in charge of the Bill on the termination of his labours. We are grateful to him for his courtesy and his patient consideration, during the debate, of the amendments put forward by non-official Members.

Sir, coming to the Bill itself, which is about to become law, the Hon'ble Member in charge of the Bill in his speech he made for referring it to the Select Committee called it a "non-contentious" Bill. The amendments made by the Select Committee, the new clauses added by it, the various amendments which he himself allowed, which led to the redrafting of clauses after clauses during the passage of the Bill here, and lastly the four days vigorous work in the Council, hardly justify the Hon'ble Member's expectation that this was a non-contentious Bill.

Sir, the new Bill contains many provisions, such as the right of transfer of occupancy-rights, which did not form part of the Bill as introduced in Council, and which it was distinctly said would remain untouched. With regard to such provisions of the Bill on which the sanction of the Government of India has not been obtained, and with regard to the revolutionary changes in the existing law, such as the law regarding the produce rent, regarding the transfer of jurisdiction from the Civil Courts to the Executive head of the districts in case of common manzas, regarding the depriving of the co-owners of their rights to deal with their property by sale, gift or otherwise, and also preventing them from applying for partition and such other provisions, I do hope and trust that His Excellency the Viceroy will consider them before giving his assent to the Bill.

Sir, the motion before the Council is of a formal character, and under ordinary circumstances a motion like this cannot be resisted. But, Sir, is the position normal? If the opposition to this formal motion is unusual, the occasion is also unique. The position is unprecedental and there is, as the lawyers would say, no case law or ruling to guide us in this respect. We have, therefore, to fall back on our own resources, viz., our common sense.

The Hon'ble Member in charge of the Bill in his speech of 17th January last said:—

'Under the circumstances, it is the Council's duty, I submit, not to leave this Bill as a legacy of trouble to the builders of the new province, but to apply earnestly to the task of shaping the Bill, so that it may well form a parting gift from Bengal.'

Sir, in the language of the Hon'ble Member in charge, you have shaped the Bill and the Bill you have shaped, the Bill which is the result of the experience of your officers, should form a parting gift from you. If you go a step further and pass it into law, your parting gift shall not only lose its graciousness, but probably the new Lieutenant-Governor and his Councillors will resent that on the last day of our existence we should pass it into law and thus issue a command on him to carry it out.

If we were sure that if the Bill is not passed immediately and the law put in force at once disastrous result will follow, the matter would have been different. But it is not shown that any immediate necessity is felt. Why not then hand over the Bill as considered by the Council to the new Lieutenant-Governor and let him and his Council pass it into law?

I therefore oppose this motion."

The Hon'ble MR. MADDOX said:—

"I will only say a few words. I think, Sir, that Government is to be congratulated that remedies have been provided after the injustice that has been done to Orissa in the past. We have now framed a self-contained law which will remove the overlapping and the confusion created by the piecemeal introduction of sections of the Bengal Tenancy Act. I would only like to say, Sir, that we all wish Mr. Das a long and happy career to continue to carry out the ideals and the purpose which he has already stated here, namely, to

communicate to Government the feelings and wishes of the people of Orissa, and to communicate to them the views of Government. I hope he will continue to do so for many years."

The Hon'ble MR. DAS said:—

"Sir, I congratulate the Hon'ble Member in charge of the Bill, and those who were associated with him in carrying out this measure through the Council, on the earnestness of their wish and work, and I personally take this opportunity to express our gratitude to our worthy Secretary and to the Hon'ble the Legal Remembrancer, to whose intercession I owe the clause which will give a retrospective effect to clause 163A, and which occupied so much of my time when I moved for postponement of the Bill.

The Hon'ble Member in charge of the Bill has referred to hard knocks. I suppose old men are accustomed to hard knocks, and can stand those knocks at least as well as young men. Far be it from me not to appreciate the desire on the part of Government to do justice to Orissa. My principal ground of complaint has been that, on account of the shortness of time at the disposal of this Council, many things would not receive the attention which I am sure they would have received at the hands of Your Honour and of this Council, if the life of this Council were a little longer. Nobody knew that we were going to have these administrative changes. Consequently, we were not prepared for this state of things. I will just mention one instance. When this Bill was referred to the Select Committee, I was bed-ridden, and the other Member for Orissa asked the Select Committee for the postponement of the discussion for a fortnight. I feel confident that, under ordinary circumstances, Your Honour would have granted the request, that is to say, had it not been that Orissa was to be transferred so soon. My position was that I was quite unable to do my duty towards the people whom I represent—that duty to which the Hon'ble Mr. Maddox has alluded. I could not say to the people of Orissa that I have done my best. Certainly, it was in the power of the Government to ask me to resign and appoint another person who could have taken up the work at once, the work, as I said before, being of a peculiarly difficult character.

It has been admitted that, on account of the Revenue Settlement and the Revisional Settlement having been made under the provisions of the Bengal Tenancy Act, certain errors were committed, and that one of the objects of this Bill is to correct those mistakes. Now, that in itself is difficult work. Once the existing law has been disturbed, it is really a work of validation that is done, making valid things which were invalid at the time, and consequently it requires a great deal of time and attention on the part of lawyers to do that. I do not like to say anything more now, because perhaps I have been considered the greatest obstructionist in this Council to the easy passage of the Bill. All that I can say is that I do hope that the Bill will work as successfully as those who are responsible for it expect it to be. I do hope that there will not be thousands of cases over the communal land of Orissa, for the result in that case would be the ruination of the poor people. I believe the people have a right to say to the Government: 'Do not leave dubious points of law to be settled by law courts, when you are enacting a legislation,' for the law courts are expensive. People have to pay for case law while they don't have to pay for law which is passed on the anvil of legislation. It makes all the difference, and in the case of the poor people of Orissa the difference means a great deal. I regret very much I cannot divest myself of the feeling that there has been a certain amount of hurry and disputation in connection with this Bill. I do not like to use the word "rush" as I know it is not liked, just as the word "maintenance" was not liked, and raised angry passion when mentioned. I would, however, mention here that we have been under the necessity of hearing defences with regard to maintenance from one of the Members in charge of the Bill, but in spite of that I have been able, though at the last moment, to induce the Hon'ble Member in charge of the Bill to give retrospective effect to clause 163A. What do these show? These show that the Bill had defects which could not be solved till the last moment. I do not like to say anything more. I only hope that it will prove to be a blessing to the people of Orissa,

The Hon'ble KUMAR SHEO NANDAN PROSAD SINGH said:—

"Your Honour, I beg to rise to support the motion that the Orissa Tenancy Bill be passed into law. In doing so, I must at the outset express regret that the Hon'ble Member in charge of the Bill could not see his way to accept some of the important amendments moved by the representatives of Orissa and other non-official Members of the Council. I have also to explain why I had purposely refrained from taking any part in the discussion of the various amendments on the list. The chief reason that led me to that course was that I did not like to take up the valuable time of the Council unnecessarily, conscious as I was that the task of protecting the vested interests of the people of Orissa was in very able hands.

I have now to offer my congratulations to the Hon'ble Mr. McPherson in having piloted this important Bill through the Council in such a remarkably able way. I hope we will all join in wishing him a pleasant holiday on the conclusion of his labours. I may say that it is a matter of special gratification to the people of Bihar that he is coming to us. Bihar with its needs and aspirations welcomes officials of such wide sympathies as he possesses. While supporting the passing of the Bill, may I express a hope that commutation cases, intricate, difficult and of far-reaching consequences as they are, will be placed in charge of officers of experience. I would also ask that the power of revision of record-of-rights may, in practice, be fixed at sufficiently longer intervals to minimise trouble to the parties concerned. Of course it must be admitted that when once a record-of-rights is prepared, it has to be maintained up to date by periodical revisions.

Now that our work in the Council is finished, and as the Council becomes *functus officio* in a few days hence, may I be permitted, Sir, to thank Your Honour most sincerely for your great and unfailing courtesy to us. We, the people of Bihar, humbly hope that we may have the honour at some later date of welcoming you as our Lieutenant-Governor.

We are deeply grateful to Government for giving to Bihar her just rights. True the people of Bihar and Bengal have been bound together from time immemorial under Hindu Kings, under Muhammadan Kings, and above all during the last 150 years of *Pax Britannica*. True the culture of my Bengali friends has been an incentive to the people of Bihar, and in the parting there must be a feeling of regret on these accounts. But now, as Bihar, which yields to none in its loyal devotion to the Crown, will stand on its own legs, I am confident it will not fail to occupy the position which is its just dues.

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said:—

"Sir, I rise to oppose the motion. The Hon'ble Member in charge of the Bill should no doubt be congratulated on the happy and successful termination of the discussion and deliberations of the several clauses of the Bill, but I do not think I shall be justified in congratulating the people of Orissa on having this Bill passed into law. There are certain innovations in the Bill which do not find place in the existing laws of the country, the introduction of certain new clauses in the Select Committee, and even the re-drafting of certain clauses after the Select Committee had presented their report—all these, and the introduction of a new Chapter to which the Hon'ble the Maharajadhiraja Bahadur of Burdwan has referred, ought to have taken a little more time for consideration. The postponement for the consideration of this Bill in this Council was twice asked for—on the first occasion it was proposed by the Hon'ble the Raja of Kanika, when the Bill was being referred to the Select Committee, and I had the fortune or rather the misfortune to support that motion; on the second occasion it was moved after the submission of the report of the Select Committee, when we found that out of the six non-official Members, five thought fit to submit notes of dissent, only one non-official Member agreeing with the official Members. We were under the impression that the motion for postponement would have been be accepted by the Government, because on the first occasion, when the motion was moved, Your Honour was pleased to observe that 'let the report of the Select Committee be presented; and if even then the Hon'ble Members

think that the report is not satisfactory, and that further consideration was necessary, then the postponement may be asked for.' But unfortunately that request was not acceded to, even when it was moved for the second time.

When no less than 268 amendments were proposed, the Hon'ble Member in charge of the Bill began to complain that very few of those amendments came from the Orissa Members, the majority having been proposed by Bihar Members, and it struck him as passing strange that Bihar Members should take so keen an interest in the discussion of the Orissa Tenancy Bill. I submit, Sir, that Bihar Members took a keen interest in the discussion, inasmuch as they form part and parcel of this corporate body, and as such they have as much right to propose amendments and to discuss amendments as any other Members in this Council. The next ground why the Bihar Members took a keen interest in the Bill was that, if in Bihar a Bill containing similar provisions be thrust in hereafter, it might not be said that the Bihar Members, in whose presence the Orissa Tenancy Bill was passed, did not raise any objection, and gave their implied acquiescence or consent to the passing of undesirable clauses to which the Hon'ble the Maharajadhiraja Bahadur of Burdwan has referred to in his speech. Then the third ground for our taking interest in the discussion is that Orissa now forms part and parcel of Bihar, and therefore it is our duty now to see that our co-provincialists, the people of Orissa, do not suffer by any enactment passed in the present Council.

Now, as all our proposed amendments have been discussed, the Council should be asked to pass this Bill. But the rights which the people of Orissa hitherto possessed, the right of selling their property, the right of applying for partition in case of the appointment of common managers, the question of custom of occupancy-rights,—all these, I submit, should be considered by the new Government with its new Council. This Bill will now be passed into law, and we have seen the fate of our amendments all along; but at the same time, I think it is our duty to enter our protest against the passing of this Bill. With these words, Sir, I oppose the motion."

The Hon'ble Rai Baikuntha Nath Sen Bahadur said:—

"I do not wish to give my vote on the motion without making a few observations. There is not the slightest doubt that the motion will be accepted, and the Bill passed When this Bill is passed and becomes law, it will be, as it were, the fourth edition of the Tenancy Act, the Bengal Tenancy Act, the Eastern Bengal and Assam Tenancy Act, the Chota Nagpur Tenancy Act and the Orissa Tenancy Act. This will be the fourth and therefore the latest edition, and would in future be considered as the best edition. There are certain apprehensions which naturally arise, in the minds of those who will be governed by this Act. This Bill, amongst other things, deals with four subjects, which have introduced innovations, one of which, I am forced to call, revolution. Transferability with regard to rights of occupancy and tenures have been considered and introduced in this Bill in a form which does not exist in the other Acts. Then the appointment of a common manager deals with the subject in rather a new way. Its enforced artificial disqualification of co-owners is a feature which seems to us to be very objectionable. I have to refer to the curtailment of rights and testamentary disposition, and I still maintain that position. Then, the conservation of communal rights is a provision in this Bill that is of a striking nature. *Sarbadasadharan* lands, or enjoyment of communal rights, will perhaps, as has been referred to by the Hon'ble Mr. Das, give rise to litigation. Then the chapter, as regards land records or the repetition of the record-of-rights will be a fruitful source, I won't say of oppression, but of distress on the part of the poor tenants. Annual repetition of the record-of-rights would be perhaps an impossibility, because whoever has any experience with regard to these record-of-rights knows that records can be completed within a period of three years. These are the main features in which innovations have been introduced and I am afraid hereafter, in the different provinces, the principles laid down regarding these four different subjects may be sought to be introduced. It is for that reason that I submit this voice of dissent with regard to the principles underlying these provisions. Though I am

willing that the Bill should be passed, still my vote will be that the Bill be passed as it is with this note of dissent.

The Hon'ble Mr. Dip Narayan Singh said:—

Your Honour, I also beg to oppose the Orissa Tenancy Bill. It is not in any vindictive mood that I and my friends from Bihar have persisted in opposing this Bill even at this stage, but I hope and believe that we Biharis know how to fight hard, yet submit gracefully to a fair defeat. But, Sir, there is a lurking doubt in my mind that the fight has not ended as far as this Bill is concerned. I beg to put before the Council the doubt that has arisen in my mind. In the validating Bill that was enacted by the Law Member in the Viceroy's Council the other day,—if I am not mistaken,—it was enacted that all Enactments and Bills then prevailing should remain valid in the two provinces that come into existence on the 1st of April next. Sir, this Orissa Tenancy Bill was not then in existence, and I do not know how far the passing of this Bill by this Council to-day will be valid, unless it is ratified by His Excellency the Viceroy before the 31st March.

The President said:—

"It is not for us to discuss a sphere of action which appertains to His Excellency alone.

The Hon'ble Mr. Dip Narayan Singh said:—

"I do not intend to do so, but we hope that it may be possible that this Bill even now may not become law."

The President said:—

"If the Hon'ble Member entertains any such hope, will he please retain it in his own breast? This is not a matter for discussion in this Council."

The Hon'ble Mr. Dip Narayan Singh said:—

"We have reasons for not supporting this Bill they have already been discussed by my other friends from Bihar, and I do not wish to take up any more time of the Council. With these few words, and in full agreement with the remarks made by my friend to the right as to the general tenor that has existed in this Council in the short time we have been here, I beg to oppose the passing of this Bill."

The Hon'ble Mr. McPherson said:—

"Sir, I do not propose to detain the Council by replying to the remarks which have been made regarding the Bill, or the various criticisms that have been passed upon it. I wish only to refer to a few personal matters. I should like first to refer to Hon'ble Mr. Das's complaint that the proceedings of the Select Committee were not postponed till he recovered from his illness. As Mr. Das wanted an adjournment of one month, we had practically to decide between acceding to his request, or abandoning the Bill which we had already decided in Council should be proceeded with. We were, therefore, much to our regret, unable to accede to his request. The attitude of the Hon'ble Members from Bihar has been brought up again by the Hon'ble Maulvi Fakhr-ud-din, but I do not seek to discuss the subject further. We have already had considerable enlightenment regarding the attitude of the Bihar Members. Finally, I wish to thank Hon'ble Members for the kind way in which they have referred to my connection with the Bill, and to say that if credit is due to any one for the passing of the Bill through Council, it is due in great measure to my hon'ble friend Mr. Kerr, who has taken a very heavy portion of the burden off my shoulders.

With these remarks, I beg to move that the Orissa Tenancy Bill as amended in Council be passed."

The PRESIDENT said:—

"Gentlemen of the Council, before I put the motion, I wish to say a few words with reference to my personal connection with the Bill whih I trust will now be passed. I wish to take my full share of the responsibility for initiating this Bill, and indeed for having brought it forward in Council and for its being passed by the present Council; and I wish to say that I think that possibly, (though, of course, a measure of this kind has many different origins), I had as much to do as any one individual with the origin of the Orissa Tenancy Bill.

For some years previous to 1908 I served in Orissa, and as my connection with Orissa has been referred to from time to time, I desire at once to disclaim the character of an expert on Orissa land-law. I have not served in that country long enough, nor been able to give sufficient concentration to Orissa land-law to be able to claim any expert knowledge of it, but I have served for some years in the division, and have helped to administer the law and have thus been fully conscious of what was going on. The matter which first came to my notice was the exceedingly unfavourable position in which certain classes of sub-proprietors and tenure-holders were placed. I instance the *bajiaftiars*, for whom Mr. Das has expressed so much solicitude—solicitude which they in fact most justly deserve, and I thought of enquiring into the matter and of obtaining the opinions of people who have spent the greater part of their lives in Orissa. When the Bengal Tenancy Act was passed in 1885, it was passed with practically no reference to the special circumstances of Orissa. I do not think even that there was in the Council, as then constituted, any one with a special knowledge of the circumstances of Orissa and of its various classes of sub-proprietors and tenure-holders, of their rights; or their requirements, or of their relations with the zamindars on the one hand, and the cultivating raiyats on the other. These peculiar relations and circumstances of Orissa having thus not been specially considered in the Bengal Tenancy Act, there were thus no direct provisions of law which could be made fairly applicable to them. The result was that it came to be found that some of the classes to which I have referred were obviously suffering very much in their interests; and the general tendency was that they were being reduced to a lower status, and that, provisionally, sub-proprietors and tenure holders were being gradually pushed down to the position of ordinary raiyats. I succeeded in attracting the attention of superior authority to some of these grievances, and it was decided that a remedy was required, and it was then considered what form the remedy should take and how it should be effected. That, I think, goes back perhaps to 1906 or 1907. In the meantime, attention was constantly directed to the uncertainties of the law in Orissa. Acts X of 1859, VI of 1862, and VIII of 1865, were still partially in force and governed the trial of rent suits, while a number of the provisions of the Bengal Tenancy Act, had, subsequently to 1885, and in the hope of improving the relations between landlords and tenants in certain particulars, been introduced from time to time. It was, however, constantly found that the provisions and procedure one Act were in conflict with the provisions and procedure of another, and trained lawyers frequently were obliged to admit that they were unable to advise what the real law governing any particular case was; how far, for instance, the Rent Act of 1859 was still in force, and how far the new provisions of the Bengal Tenancy Act modified or abrogated it. As each fresh difficulty arose, the simplest way to get over it appeared to be the introduction of another provision from the Bengal Tenancy Act, and constant pressure was put upon Government, both by officials and non-officials, to apply more and more of them to Orissa in the expectation of remedying the admittedly unsatisfactory condition of the land-laws. At that time I left Orissa and became Revenue Secretary to this Government, and it became apparent to me that we had arrived at a point of confusion that was undoubtedly most injurious to the interests of the people of Orissa, and that one of two things had to be done—either the Bengal Tenancy Act must be enforced wholesale, or Orissa must have a Code of its own.

I have already explained that, in certain particulars, and because of the special local requirements of Orissa, the Bengal Tenancy Act, applied wholesale,

appeared to be clearly unsuitable, and it seemed to follow that Orissa ought to have a Code of its own. That Code would no doubt embody most of the leading principles of the Bengal Tenancy Act—the principles of which Act, it is admitted, have been carefully thought out, and have stood the test of time and are generally suitable to most of the relations between landlord and tenant. But every part of the country has got its local customs and peculiar agrarian characterics, and no one Code can possibly provide for all cases. It therefore seemed that a special Code should be prepared which, while embodying the general principles of the Bengal Tenancy Act, as far as they were applicable, would provide for the special circumstances and peculiar features of the Division of Orissa.

I made that suggestion, as Revenue Secretary, to Sir Andrew Fraser, and he thereupon set on foot the special enquiry made by Mr. Maddox, from which this Bill, which is now before us, has sprung.

I had very little to do with the exact form which the Bill has taken, but I do find satisfaction in the fact that I had something to do with the initiation of a movement that we are here to-day, so far as in us lies, to carry into effect.

I realise that a new self-contained agragrian Code is a matter of very great difficulty, and requires very close consideration; but I do not forget that this Bill has now been before Government for nearly four years, and has been, during that time, the object of the most exhaustive inquiries and the most earnest attention on the part both of officials and non-officials alike. I admit indeed that very probably it may contain imperfections. I take it that few Acts have been passed which have not had their imperfections. A Bill of this size is unlikely to escape them, but I doubt if these are serious compared with the importance and effectiveness of the main provisions which are designed to afford much needed relief to the people of Orissa. I recognize the care with which the Bill has been discussed both in Select Committee and in Council. It has been very ably conducted by the Hon'ble Member in charge and by the other official Members who have assisted him, particularly the Hon'ble Mr. Kerr. I recognise also the very close attention that has been given to it by the non-official Members who took part in the Select Committee, and by those who have discussed its provisions in Council. With regard to the extremely critical attitude that has been taken by the Bihar Members, I think that it was perfectly natural that they should feel that what has been applied to Orissa to-day, may possibly be applied to them to-morrow. But, if I may venture a word of advice, I would impress upon them the desirability of remembering, now that their fortunes are bound up with Orissa, that different cases and different circumstances require different decisions, that one invariable Code cannot be made to suit all parts of a great Province, and that what is good for Orissa may not necessarily be good for Bihar, and that they ought, therefore, in dealing with the different parts of their new Province, to be prepared to broaden their point of view and to realise that certain remedies may be necessary and desirable for their neighbours, even though they may be unpalatable to themselves, and thus to refrain from being solely influenced by the idea that the same remedies may be forced upon them, and to oppose them on that ground alone. I am not indeed aware that they have any grounds for supposing that those provisions of the Orissa Tenancy Bill, which have been inserted because of their peculiar fitness to the needs of Orissa, will be forced upon them in future, but I do hope that to Orissa itself the Bill will be a real benefit, and that this law is will tend in future to straighten out many difficulties that have afflicted the people in the past."

The motion was put and agreed to without a division.

THE BENGAL MINING SETTLEMENTS BILL, 1912.

*7. The Hon'ble Mr. Cumming moved that the report of the Select Committee on the Bill to provide for the sanitation of mining settlements in Bengal be taken into consideration.

He said:—

"Sir, at this stage it is not necessary to add anything to what was stated when the report of the Select Committee was presented."

The motion was put and agreed to.

*8. The Hon'ble Mr. Cumming also moved that the clauses of the Bill be considered in the form recommended by the Select Committee.

The motion was put and agreed to.

†1. The Hon'ble Rai Baikuntha Nath Sen Bahadur moved that after clause 3 (5), the following be added, namely:—

"(5a) One of the persons appointed under sub-section (1) shall be the Civil Surgeon of the district in which the mining settlement lies."

He said:—

"Sir, my object in moving this amendment is simply this, that there always ought to be a Sanitary officer of the Government, and that the Civil Surgeon ought to be made *ex-officio* member of the Board. I find from the opinions collected that the Deputy Commissioner, Manbhum, the Sanitary Commissioner, Bengal, and the District Magistrate of Burdwan are all of the same opinion, and they also think that there ought to be a medical officer. The Civil Surgeon of the district is the chief responsible officer on behalf of the Government, and he is fit to know much better about questions of sanitation than anyone else. Of course with regard to the District Magistrate or Subdivisional Magistrate, the question stands on a very different footing altogether. I propose therefore that this amendment be accepted, and that the Civil Surgeon be made *ex-officio* member of the Board."

The Hon'ble MR. CUMMING said:—

"Sir, I quite appreciate the propriety of the proposal of the Hon'ble Rai Baikantha Nath Sen Bahadur, but he appears to have overlooked the principle which I mentioned in presenting the report of the Select Committee, viz., that the Bill was to be as elastic and flexible as possible. To that end the original proposal that the District Magistrate or the Subdivisional Officer should be appointed by statute has been relinquished. It may however be said, as the Hon'ble Member has said, that a medical man should certainly be on the Mines' Board of Health. I quite agree with the Hon'ble Member, but it need not follow that the Civil Surgeon would in all circumstances be the officer whose services would most conveniently be available for appointment. There are such officers as the Deputy Sanitary Commissioner and so on, and it may be that an Indian Medical Service officer who has special knowledge of this subject of sanitation may be available.

I therefore do not recommend to the Council the acceptance of his amendment."

The motion was then put and lost.

‡2. The Hon'ble RAI BAIKUNTHA NATH SEN BAHADUR moved that the word "shall be punishable on conviction" be inserted after the word "sub-section" in line 10 of clause 17(3).

He said:—

"Sir, my object is not to oppose the provision in the Bill for punishment for repeated breaches, but my object is simply to give legality to the provision. I beg to draw the attention of the Council to a cognate provision in the Bengal Municipal Act. Section 216 of Bengal Municipal Act lays down—

'Whoever, being an owner or occupier of any house or land within a municipality, fails to comply with a requisition issued by the Commissioners

* These numbers refer to the order of motions in the List of Business.
† This number refers to the order of the amendments in annexure B in the List of Business.
‡ The number refers to the order of the amendments in annexure B to the List of Business.

under the provisions of sections 202, 204, 206, 207 or 208(2), shall be liable, for every such default, to a penalty not exceeding fifty rupees, and to a further penalty, not exceeding ten rupees, for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.'

With regard to this provision, reported in I. L. R., Calc., page 565, there their Lordships have laid down this ruling—

'A rule has been granted to consider the order regarding the daily fine. There are several reported cases in this Court on the subject, and it has been held that an order on account of daily fine is illegal, inasmuch as it is an adjudication in respect of an offence which had not been committed when such order was passed.'

Then Their Lordships discussed the question and referred to other cases. In this connection I would also beg to draw the attention of the Council to the cognate provision in the Calcutta Municipal Act. The wording has been changed there—the wording of section 565 of the Calcutta Municipal Act is to this effect:—'Continuing offences in certain cases punishable after the first conviction with a daily fine. Whoever after having been convicted of certain offence continues to contravene the said provisions shall be punished for each day after the first during which he continues so to offend with a fine which may extend to etc.

Now such being the case, my amendment simply proposes, in order to give legality to this further fine, that after the word "sub section" be added the words "shall be punishable on conviction": to lay down after the first conviction that there should be another prosecution and another conviction for the continuing offence. I think the Council should consider whether or not such a provision is necessary in order to make it legal."

The Hon'ble MR. CUMMING said:—

"Sir, it is possible that the Hon'ble Member has to some extent been under a misapprehension. The Bill does not contemplate that any one can be punished without a conviction, or that any one can be punished for any neglect which may take place in the future. On the contrary, it is definitely stated that the breach must be proved to have been persisted in, that is to say, it must be so proved in a court. But, apart from that, the Bill reproduces the exact words of the Indian Mines Act of 1901. As this is an Imperial Act, it was thought that we would be on sure ground in repeating the language of that Act; and that if there were any departure from the language of that Act, it might hereafter be assumed in a court that the departure suggested a different meaning from that in the Mines Act. The ruling based on the Municipal Act to which the Hon'ble Member has referred was considered. It is not intended that there should be any order directing a penalty regarding a future neglect; as I have explained, it is regarding past neglect to which the second portion of the clause refers. The intention of the Hon'ble Member is to make the language free from ambiguity. All I can say is that the clause is sufficiently clear as it stands, and that in the opinion of the legal advisers of Government the amendment is unnecessary."

The Hon'ble BABU BAIKANTHA NATH SEN said:—

"Sir, The Hon'ble Member in charge of the Bill considers that the amendment proposed is superfluous. The intention of the Government is that there should be a subsequent conviction. Well, intention, according to the legal interpretation, has to be gathered from the word. Here in this case to which I have made reference the provision is that the breach would have to be proved. The Hon'ble Member in charge of the Bill says that it must be proved in a Court of Justice. It may be considered hereafter that it must be proved before the Board—the Board to consider after proof of the conviction that there has been a breach. So that it is not safe to rely upon that. I therefore suggest that it be 'shall be punishable on conviction.' Then it has been urged by the Hon'ble Member in charge of the Bill that this provision is in the Indian Mines Act. Well, if there is such a provision and if there is this flaw, that would not make it legal in a subsequent Act; and if the flaw is

pointed out, it is much better there should not be any ambiguity on the subject. I think, therefore, that the Council should consider whether or not the amendment proposed by me should be accepted in order to make it unambiguous."

The motion was then put and lost.

*9. The Hon'ble MR. CUMMING moved that the Secretary be directed to re-number the clauses and sub-clauses of the Bill in consecutive order, and to make corresponding cross-references thereto.

The motion was put and agreed to.

*10. The Hon'ble MR. CUMMING moved that the Bill, as settled in Council, be passed.

The motion was put and agreed to.

The Hon'ble MAHARAJA OF BURDWAN said:—

"Your Honour, this is the last sitting of the Legislative Council of the last Lieutenant-Governor of Bengal, and it is not strange that sadness should creep into our speeches. Belvedere, which to many of us has been the haunt of many a pleasant, happy and instructive incident and association, will no longer be the residence of the Provincial Ruler. But I hope that this historical place will not be sold or utilized for any purpose not in keeping with its past dignity and traditions, and that although we shall in the future have to go to Government House for our "Ayes" and "Noes" as well as for paying our respects to our ruler, we may, when we have to pass by Belvedere, at least feel this satisfaction, that it is being utilized for some noble purpose associated with Bengal.

Your Honour, you will be relinquishing your high office very soon, but while we regret that fact, we rejoice to know that we shall still have you in our midst, and that you will be one of the three trusted advisers of our first Governor. It is befitting that our last Lieutenant-Governor should be a Bengal man, and one who during a difficult time has steered the barge of State in a manner well worthy of the traditions of the Bengal Civil Service, and I congratulate you, Sir William, very heartily on your success as our ruler during the past nine months.

The ship of the Nobleman who is to guide our destinies for the next five years will soon be leaving Madras for Calcutta, and I am sure I voice the opinion of one and all Bengal Members here in saying that we shall accord Lord Carmichael a hearty welcome to Calcutta. It is true we feel Calcutta's dethronement from the Imperial standpoint, but we fervently hope and pray that under the new state of things, under our first Governor and in our new Presidency, we shall be able to gather our forces together and by a genuine *entente cordiale* between the Muhammadans and the Hindus on the one hand, and the rulers and the ruled on the other, be able to maintain Calcutta's superiority and importance over all other Provincial capitals.

Now a word of farewell to my Bihari and Uriya friends in this Council who will cease to represent Bengal from the 1st of April. We have been linked together from a long time, and that is why we feel the parting so much. But as the new arrangements are expected to be conducive to the development of the newly created Province of Bihar and Orissa, I wish my Bihari and Uriya friends good luck and prosperity in their new environments."

The Hon'ble MR. NORMAN MCLEOD said:—

"Your Honour, may I be permitted to add a few words to what has been so well said by my hon'ble friend the Maharajadhiraja Bahadur of Burdwan. On behalf of the European non-official Members of this Council, I fully endorse the deserved tribute he has paid to your Honour's occupancy of the Presidential Chair. We have to thank you for your unfailing courtesy, your uniform fairness, and from your keen insight in all the questions that have come before us, the help you have given us in arriving at proper conclusions in our deliberations. This Council, like several others, has been in the nature of

* These numbers refer to the order of the motions in the List of Business.

an experiment, but I don't think it can be denied that, with ripened experience, it, and similar Councils, cannot fail to be of the greatest assistance in the proper administration of our great Empire. During the time we have been in existence we have learnt many and instructive lessons. I have always heard that words were given to us to express our thoughts. We have learnt that such is not the case; for we have often, in weariness of the flesh, listened to hours of speeches which have conveyed but few thoughts. This is a matter which ought to engage attention in framing the rules for the new Council, as the present waste of time is enormous. A few well chosen and considered words have always greater effect than hours of pedantic oratory—where the point of the argument is drowned in the overflow of utterance. I would draw the serious attention of prospective Members of Council for their guidance, to the terse, crisp, conclusive and convincing statements made by our official Members We have also learnt that however bitter may have bean our debates, they have never interfered with the warmth of our friendships, and I do not think any one of us can say that we do not leave this Council with a better understanding of one another than when we joined it. We have learnt a still greater lesson, that in the heat of argument, the thrust and parry of wordy warfare, never for a moment has any one forgotten the courtesy of debate or the dignity of this Council It is, therefore, with much regret we sever our connection with the first and last reformed Council of a Lieutenant-Governor of Bengal, and we do so with every good wish for your Honour's continued welfare and to express the deep satisfaction of the mercantile community that Your Honour will remain at the right hand of our new Governor."

The Hon'ble Mr. Golam Hossein Cassim Ariff said:—

"Your Honour, as it is the last day of this Council, I take this opportunity to thank Your Honour and the official Members of this Council for the courtesy and kindness shown to the non-official Members, and facilities given to them to discharge their duties. We have been obliged to put questions in this Council, some of which might have caused inconvenience and trouble of supplying us with the informations required, and they have in many instances redressed grievances, as far as practicable, implied in those questions.

We are parting to meet no more in this Council. We hope the different parts of the province about to be separated and constituted into independent provinces will go on prospering with passing years; and though some of us are sorry for the separation, none of us will have cause for further regret.

On behalf of Muhammadans of Bengal, and specially of Calcutta, whom I have the honour to represent, I beg to offer our thanks to Your Honour for the assurance given to them about the protection of their shrines and places of worship in the operation of the Calcutta Improvement Trust."

The Hon'ble Maharaja Prodyot Kumar Tagore said:—

"Your Honour, I rise to associate myself with what has just fallen from my hon'ble friend the Maharajadhiraja Bahadur of Burdwan, and to add that we all gratefully appreciate the courtesy and kindly consideration which we have uniformly received at Your Honour's hands since Your Honour became the President of this Council. If the legislative machinery has worked smoothly, this gratifying result has been due largely to the tact, ability and impartiality with which both Your Honour's predecessor and yourself have shown in presiding over our deliberations. We cannot forget that so far as this Council is concerned there has never been any interference—direct or indirect, overt or covert—with the freedom of debate, and we non-official Members have been permitted to give expression to our views, our wants and wishes, without any check or hindrance whatsoever. We shall always remember that if our views have not prevailed as often as we could have wished, they have, at any rate, always received the patient consideration of Government. No unseemly scene has chequered the even tenor of the proceedings of this Council, and the friendly and harmonious relations between the official and the non-official Members have never been ruffled. I can only hope that our successors may be no less fortunate than we have been."

The Hon'ble RAI SHEO SHANKAR SAHAY BAHADUR, said :—

"Sir, as this is not only the last meeting of this Council, but as we, the Members of Bihar and Orissa will never have an opportunity of sitting side by side with the Members from Bengal, I hope you will permit me to make a few observations. We come from the backward province of Bihar, and we are not only backward ourselves, but one and all of us were new recruits to Council work, with no previous experience when we entered the Council two years ago. I beg therefore most respectfully to offer our sincere thanks to you, Sir, and to your illustrious predecessor, for the very kind and courteous treatment, and for giving us full latitude for our shortcomings, which I admit were manifold. We are also grateful to the official Members of this Council, from whom we have received all kindness. Our acknowledgments are also due to the non-official European Members, who were always indulgent towards us, and from whose businesslike treatment of all questions coming up before the Council we have profitted very much. Lastly, we owe a lasting sense of gratitude to the Members from Bengal, who, like the *karta* of the hitherto joint family, have always looked after our interest and assisted us in every possible way.

Sir, as a result of the royal boon announced at Delhi, which we all value so much, we have our own Lieutenant-Governor and Executive Council. I see there is a feeling that the Biharis have got much more than they deserved. For my part I am prepared to admit that this is so, and for this boon, we, our sons, their sons and son's sons, generation after generation, shall be ever bound in gratitude to His Gracious Majesty and to His Excellency the Viceroy. We hope and trust that with the help of the Ever Merciful Providence and under the able guidance of those Members of your service, Sir, who are going to the newly-created province, we shall in the language of His Excellency the Viceroy 'justify the policy of the Government of India by the maintenance of peace and order within *our* boundaries."

Sir, though this is so, and we are proud of the boon, nevertheless, the parting from old friends and old associates is painful indeed. I would, however, assure our Bengal friends that though in consequence of the growing largeness of the family and multiplication of its members, it has been considered for the peace and prosperity of both to separate the joint family and constitute two separate families, the junior branch will always, separated though we may be, remember with feelings of gratitude and veneration the senior branch who have had our interests at heart After all we are products of the beneficent policy of the British Government, and I will speak to my Bengali friends in the language of the Urdu couplet—

Brather kya bulke ham tum ek jigar hain,
Ekhi nakhl ke 'dono sigar hain,

which, when translated, means—

We are not only brethern, but you and I are of the same heart,
And you and I are fruits of the same tree.

Lastly, Sir, I will ask them to continue to entertain the same brotherly feeling which they have hitherto entertained for us."

The Hon'ble SRIA NATH RAY BAHADUR said :—

"Sir, I beg to express my deep sense of obligation to Your Honour for the unfailing courtesy and kindness which you have been always good enough to show us, and the patience and forbearance with which you have been good enough to listen to our arguments. It is with a sense of great regret that we have to part, Sir, from our Bihari and Uriya friends. Our death-knell has already been sounded: we have already received intimation that this Council will be *functus officio* from the 1st of April. This is the last occasion on which we meet under the roof of a common ruler, and as such it is with feelings of great grief and sorrow that we have to part from our Bihari and Orissa friends. Since the establishment of British Government 150 years ago, the fates of Orissa, Bihar, and Bengal have been linked together. The Bihari and Orissa and Bengali gentlemen have always thought of each other in

sorrow and joy, and they have received material assistance in weal and woe. We know very well that during the controversy regarding the Bengal Tenancy Bill, it was Bihar which was a tower of strength to us, and we have received material assistance, pecuniary and otherwise, from our Bihari friends, and as such a loss—whatever might be said in modification of the Partition—our loss has been more than counterbalanced by the creation of a new province, by taking off a larger slice from the old province, and by the dethronement of Calcutta. Under all these circumstances, I beg to express our deep condolences that this is the last occasion we shall have of meeting our Bihari and Orissa friends, and that we shall have no more occasion to meet under the guidance of a common ruler. However, we shall never forget the feelings, the deep feelings, of esteem and regard and admiration, which we have hitherto always entertained for our Bihari and Orissa friends. With these few words I beg to express my feelings of regret again at our parting."

The Hon'ble BABU KIRTANAND SINHA said :—

"I would like to associate myself with what has fallen from my honourable friends. The long deliberations of the Council have made most of us tired, but we are very sorry we will not have the opportunity to meet in Council with our Bihari friends, whom we shall miss very much in the new province of Bengal. On behalf of the landlords of Bengal, I thank Your Honour for your kindness towards us, and I thank the Hon'ble Members, both official and non-official, for their kind advice to us and the assistance they have given us".

The Hon'ble MAULVI SAIYID MUHAMMAD FAKHR-UD-DIN said :—

"Sir, this is the most critical time, and my heart is full. I had no desire to say anything on this occasion, but I think I will be lacking in my duty if I did not express my deep satisfaction of the services rendered by the official Members, and the help which we have received from time to time from Your Honour and Your Honour's predecessor in office. This is a time when my Bengali friends are proposing farewell to us; this is the last time we shall meet in the Bengal Legislative Council, and I feel, Sir, when I realise that there will be no more occasion to sit with my Bengali friends in this Council, that we are highly indebted to those Bengali friends, especially to those who are old Members of the Bengal Legislative Council, for we have received much help and much instruction from their work. In this Council, so to say, Bihar was wholly unrepresented before, and none of the Bihari Members had ever before the opportunity of working in this Council. We knew you, Sir, not because you happened to be in Bengal holding the post of Chief Secretary, then the high post of being a Member of the Executive Council, and then the highest post of being a Lieutenant-Governor. We knew you even before when you were for some time in our midst in Bihar. We knew your amiable disposition, we knew your courtesy, hitherto shown when you were in Bihar, and we express our satisfaction that, even in this Council, you have extended the same courteous feeling, the same sympathetic feeling towards us in the deliberations of this Council. No doubt we have been defeated from time to time in moving our resolutions, in moving our motions, and in getting unsatisfactory results, but we are alive to the fact that in spite of our defeat, the Government has been all along taking keen interest in those motions, and something has been done. Therefore, we think that the Members of the Bengal Legislative Council have done much work for the progress of their country-people. Now, I thank you very much, Sir, for all the help which you have given to the Members of the Council from time to time, and I thank my Bengali friends, especially the Hon'ble Maharajadhiraja Bahadur of Burdwan, who has been bidding us farewell, for expressing his sympathy towards the members of Bihar."

The Hon'ble KHAN BAHADUR MAULVI SARFARAZ HUSSAIN KHAN said :—

"Your Honour, we, the Councillors of this Council, representing the different constituencies of Bihar, express to Your Honour, at this time of

separation, the heartfelt thanks for your invariable courtesy, kindness, and your guidance. We are none the less thankful to the official Members for their having given a patient hearing to us, and for their sympathy with Orissa people. Your Honour, although we are now separating, we assure our Bengali friends that we are separating with a heavy heart, and the painful feeling of losing the co-operation of the most advanced community of India—I mean the Bengali community."

The Hon'ble MR. DAS said :—

"Your Honour, I do not know whether any Hon'ble Member present here to-day, has been elected to this Council as often as I have been. We are just now at a critical moment in the history of this Council. Hon'ble Members have, to use the expression of the Hon'ble Mr McPherson, given and received hard knocks, but we have always felt that, collectively as a corporate body, we were a force, a political force, a legislative force, with the President as our leader and captain. We are just at the point of that force being disbanded. Naturally, there is a feeling which can be better realised than expressed. The Hon'ble Maharajadhiraja Bahadur of Burdwan, in referring to the administrative changes which have been introduced, expressed his good wishes towards the people of Orissa and Bihar. I am personally very thankful for that expression. If the Maharaja will accept it, I should offer him in my representative capacity, the gratitude of the people whom I represent. As regards the expression of gratitude and felicitous expressions and greatful appreciation of the virtues in the President, I beg to associate myself with the greatest pleasure. Whether the administrative change which has brought about the severence will be good or not for Orissa is a question which only prophets can say, but the history of this Council, my connection with this Council, Orissa's connection with this Council is a matter of history,—at least will be a matter of history two or three days after; and history, Sir, stands on a much firmer basis than prophecy. I am especially thankful to Your Honour for your remarks which go to show the interest you have taken in the people of Orissa during the time you were at the head of the divisional administration there. Before we part let me assure you, Sir, on behalf of the people of Orissa, that the people of Orissa will always watch your career and always entertain a hope, and join in the prayer, that you may still enjoy higher honours and occupy higher offices, and be a source of good to the people among whom you may live now. The people of Orissa will always call you as they have hitherto called you "Duke of Orissa," though the people of Bengal may call you Sir William Duke; and Orissa, though severed from Bengal, will have this satisfaction that the experience, which Your Honour gained in Orissa, has been of service in Bengal, Orissa also has been useful to Bengal in other ways, having contributed to some extent to the experience which officers like Mr. Maddox now possess in the high office he occupies. I wish to express Orissa's feelings towards this Council, towards Bengal and also towards Your Honour personally."

The Hon'ble BABU BHUPENDRA NATH BASU said :—

"May it please your Honour, I shall detain the Council for a few minutes. My position has been in this Council a position of some difficulty, for, in default of a constituency, I came here by the grace of Your Honour's Government, but I break no confidence when I say that I came with Your Honour's personal assurance that there should be no restraint upon my liberty of action. Therefore, as one of the Members of Your Honour's Council, I am under a peculiar obligation to your Honour. I quite appreciate the discharge of our difficult duties as Members of this Council.

We have offended the susceptibilities, and, I am afraid sometimes, raised prejudices against us, but so far as we are concerned, we have tried to discharge our duties honestly and to the best of our light; that light probably has not always been quite so good as it might have been. My friend the Hon'ble Mr. MacLeod has made a novel statement which I have heard for

the first time in my life, namely, that speech was intended to express one's thought I was always under the impression, and it has been said by a very high European authority, that speech was made to conceal one's thoughts. I am glad to have a contradiction from my friend. In making that observation I do not mean to say that, so far as we are concerned, we did not try to make ourselves understood, but I am afraid from the tenor of the observation which my Honourable friend has made to-day that we failed to make ourselves understood. Whether it was our fault or the fault of somebody else, that is a question which others must decide. But on an occasion like this, I do not desire to refer to matters controversial. My friends from Bihar and Orissa have expressed their regret on parting from us, but that regret cannot be so keen as ours is. The people of Bengal have been in association with them for 150 years or more. One of my friends from Bihar has said that it was an overgrown family, and it was desirable that we should part and break up. I accept that position; it is better for us to part in peace than in anger, though we part in sorrow. All that I do hope and pray for is that Bihar and Orissa may be as great as they desire to be, and that they may say hereafter that their association with Bengal conduced, in some degree at least, to the position that they may attain in future years; for whatever may have been our failings—and I as a Bengalee do not seek to minimise them,—it is undeniable that we Bengalees have a passionate fondness for our country, which exercises over us a degree of fascination which probably is unknown to the rest of India. If that passionate fondness also actuates my friends from Bihar and Orissa, I shall be very glad indeed. People have found fault with our devotion to our mother-land, and for our provincialism, as they have been pleased to call it. I shall be glad if that trait developes in our friends of the old province. We part with them in sorrow; and not only in sorrow is it that we part from our friends of Bihar and Orissa, but there are many faces around us in this chamber whom we shall miss in a short time. So far as we people of Bengal are concerned, we can assure them that we part from them as we do part from dear and well-beloved brothers. For I tell you, Sir, from my place in this Council, that whatever may have been the differences between ourselves and the Members of your honourable and distinguished service, we have always recognized in them a high sense of duty and a keen and lofty desire to do good to the people over whom they are placed to serve, and in parting from them we part in sorrow. We wish them all prosperity and hapiness in future, and we pray that when they go away from my province they may have elsewhere the same affection, the same consideration, the same regard and the same devotion that they had in my province."

The PRESIDENT said :—

"I will not prolong these painful farewells, because they are painful, but the occasion is undoubtedly one which calls for some remarks, inasmuch as two things, one of them very young and one of them very old, are about to disappear together. The young one is our Council in its present form, which has lasted for little more than two years and in a few days will dissolve. The other is the historic connection between Bengal, Bihar and Orissa, which has now lasted, under the British Government, for over a century and a half, without counting the long period preceding, when these provinces were most often united under the same Muhammadan Government. The Council will rise, like the Phœnix, from its ashes, and we need not spend too much grief upon it It is now two years or more that it has been in existence, and we have gained very much from its being a Council for the United Provinces of Bengal, Bihar and Orissa, and from our having a large number of members from all portions of them, and thus having learnt to consider many questions from many different points of view. The debates have, I am certain, in that respect, been more interesting than they could have been in the Council of a Province which was entirely homogeneous. That advantage we shall lose for the future, and we say good-bye with regret to the representatives of Bihar and Orissa—a regret which is qualified by the fact that we know that they believe that the separation is for their own

good and, in many ways, for their advancement. It is undoubtedly well for them that, in the past, they have been connected with Bengal and that they shared the same advantages. That connection has certainly been a great advantage to them, though it may well be that the time has now come when it is best for them to stand by themselves and to make their way by their own efforts. There is one consolation, at any rate, to us of Bengal (as about to be reconstituted), which perhaps has attracted too little notice hitherto, and that is that we shall recover a certain provincial precedence and importance, of which we had hitherto been deprived, not from any fault of our own, nor from any fault of Bengal, but on the contrary, from the great increase in its importance, and in its progress, which resulted curiously in, the Imperial altogether overshadowing the provincial aspect, and in the province taking a lower place than it might have otherwise claimed. I refer to the constitutional or historical aspect. From the commencement of the Dewani till 1774 there were Governors of Bengal, with Councils of their own, who exercised a somewhat vague and indefinite supremacy over the other Presidencies. From 1774, under an Act of the previous year, the Governors became Governors General of Fort William in Bengal, and so continued for 60 years. During this period the supremacy of Bengal was unquestioned, for we find that the whole of the present Empire of British India (excepting the two sister Presidencies), as it was added to from time to time and consolidated with our earlier possessions, was incorporated in the Presidency of Fort William. From 1834 to 1854 the Governors-General were no longer the Governors-General of Fort William but Governors-General of India, while, however, they continued to be Governors of Bengal. Then came the famous Act of 1853, by which power was taken to appoint a Governor over the Presidency of Bengal—a power which has not been put in operation until after the lapse of 59 years;—but instead, under the alternative provision, a Lieutenant-Governor was appointed, and for these 59 years the province has been administered by a series of Lieutenant-Governors of whom I have the honour to be the last. In that way the Province of Bengal, in a certain sense, undoubtedly lost supremacy, and fell from a position which before it had undisputedly enjoyed. At the end of the 18th century that position was unchallenged, seeing that the Governor-General was himself the Governor of the Province; but when the time came that the Governor-General ceased to be Governor of Bengal and the province passed under the administration of a Lieutenant-Governor, it fell from the rank of a "Presidency" to that of one of the "Provinces" of India, like the old North-West Provinces, now the United Provinces, or the Punjab.' One immediate and obvious advantage which we shall derive from the changes which are now so imminent, is that the Province of Bengal will recover that precedence and position which it enjoyed 100 years ago, and I trust that the knowledge of that fact will inspire us, when we come together again in the new Bengal Council, to do our duty manfully in the hope and confidence of establishing our province as once again the premier Presidency of India."

The Council is now adjourned.

A. W. WATSON,

Offg. Secretary, Bengal Legislative Council.

CALCUTTA,

The 30th March 1912.

LEGISLATIVE DEPARTMENT.

THE following Act, passed by the Legislative Council of the Lieutenant-Governor of Bengal, received the assent of His Honour on the 27th March, 1912, and, having been assented to by His Excellency the Viceroy and Governor-General on the aforementioned date, is hereby published for general information:—

BENGAL ACT No. II OF 1912.

An Act to provide for the better control and sanitation of Mining Settlements in Bengal.

CLAUSE.

BENGAL ACT No. II OF 1912.

An Act to provide for the better control and sanitation of Mining Settlements in Bengal.

WHEREAS it is expedient to provide for the better control and sanitation of mining settlements in Bengal;

It is hereby enacted as follows :—

Short title and extent.

1. (*1*) This Act may be called the Bengal Mining Settlements Act, 1912, and

(*2*) It extends to the whole of Bengal, including the Sonthal Parganas.

Definitions.

2. The expressions "agent," "employed," "mine" and "owner", as used in this Act, shall have the same meaning as in section 3 of the Indian Mines Act, 1901. VIII of 1901.

Appointment of Mines Board of Health.

3. (*1*) The Local Government may, by notification in the local official Gazette, appoint, for any area or areas in which persons employed in a mine reside, a Mines Board of Health, consisting of not less than five or more than nine persons; and shall appoint one of the members to be Chairman.

(*2*) Two of the persons appointed under sub-section (*1*) shall be nominated by owners of mines or their representatives, provided that, if the Board consists of more than five members, three shall be so nominated.

(*3*) One of the persons appointed under sub-section (*1*) shall be nominated by persons who receive royalties, rents or fines from mines.

(*4*) Nominations under sub-section (*2*) or sub-section (*3*) must be made under such procedure, and within such period, as may be prescribed by rules made under this Act; and, in default of nomination in accordance with such rules, the Local Government may appoint any person it thinks fit.

Procedure for declaring area to be a mining settlement.

4. (*1*) The Local Government may, of its own motion, or after considering any report submitted to it by a Mines Board of Health, publish a notice in the local official Gazette and in such other manner (if any) as it may think fit, intimating its intention to declare any area (not being or forming part of a mine) to be a mining settlement for the purposes of this Act.

The Bengal Mining Settlements Act, 1912.

(*Sections 5, 6.*)

(*2*) The Local Government shall consider any objections to the intended declaration which may be submitted to it in writing within such period as may be specified in this behalf in the said notice,

and may then, by notification in the local official Gazette, declare that any area or portion of an area referred to in the said notice shall, for the purposes of this Act, be a mining settlement, and be subject to the authority of such Mines Board of Health as the Local Government may designate.

Appointment, status and duties of Sanitary Officers.

5. (*1*) The Local Government shall appoint as many Sanitary Officers as it may consider necessary for mining settlements, and shall declare the Mines Board of Health to which each such officer shall be subordinate.

(*2*) Every Sanitary Officer shall be deemed to be a public servant within the meaning of the Indian Penal Code.

(*3*) It shall be the duty of a Sanitary Officer appointed to a mining settlement or any part thereof—

(*a*) to report to the Mines Board of Health what measures should, in his opinion, be taken—

(*i*) to provide for the supply of filtered, boiled or other water,

(*ii*) to provide for sanitation and conservancy, and

(*iii*) to provide for the housing of residents; and

(*b*) to exercise, subject to the control of the Mines Board of Health to which he is subordinate, such other functions, consistent with the objects of this Act and calculated to prevent the outbreak or spread of dangerous epidemic disease, as the Local Government may, by general or special order, direct, or as may be delegated to him by such Board.

Notice requiring owners to execute and maintain works of sanitation, or to carry on periodical sanitary operations.

6. (*1*) If the Mines Board of Health approve any measures reported by a Sanitary Officer under clause (*a*) of sub-section (*3*) of section 5,

or if they consider that any other measures should be taken to provide for any of the purposes referred to in that clause,

the Board shall serve,—

(*a*) on the owners of all mines in which are employed persons residing in the mining settlement, or in the part of the mining settlement to which such measures relate, or

(*b*) on the holders of the land occupied by such mining settlement or part, if they are not the owners of the said mines,

a notice specifying such measures and requiring such owners or landholders—

(*i*) to execute, within a period to be fixed by the notice, all works that the Board may consider necessary for carrying such measures into effect, and to maintain in good repair all works so executed, or

(*ii*) to carry on continuously such periodical operations as the Board may direct, for carrying such measures into effect, or

The Bengal Mining Settlements Act, 1912.

(*Sections 7-10.*)

(*iii*) both to execute and maintain works and to carry on operations as aforesaid.

(*2*) Nothing in this section shall apply to landholders other than proprietors, permanent tenure-holders, rent-free holders or holders of a maintenance grant.

Power for Mines Board of Health to execute work in default of owners.

7. If any work required by a notice served under section 6 be not executed to the satisfaction of the Board within the period fixed by the notice, or within such further period (if any) as may be allowed by the Board, or

if any work executed in pursuance of any such notice be not maintained in repair to the satisfaction of the Board, or

if any operations required by any such notice be not carried on to the satisfaction of the Board,

the Board, after serving a warning notice on the defaulters, shall prepare an estimate of the cost of the work which ought, in their opinion, to be carried out, and may entertain any establishment necessary for the preparation of such estimate, and may also cause such work to be executed.

Power for Chairman to discharge functions of Board in certain cases.

8. Any of the powers or duties conferred or imposed by section 6 or section 7 upon a Mines Board of Health may be exercised or performed by the Chairman of the Board in any case which he considers to be of such urgency as to render it impracticable to hold a meeting of the Board.

Service of notices.

9. Any notice sent by post under section 6 or section 7 shall be forwarded under registered cover.

Charging, apportionment and recovery of expenses.

10. (*1*) All expenses incurred by a Mines Board of Health for the purposes of this Act, other than expenses under section 7 and section 8, shall be charged to—

(*a*) all owners of mines in which are employed persons residing in the mining settlements which are subject to the authority of that Board, and

(*b*) all persons who receive any royalty, rent or fine from such mines.

(*2*) All expenses incurred by a Mines Board of Health under section 7, or by the Chairman thereof under section 8, whether or not they exceed the estimate prepared under the former section,

and all expenses incurred by any holder of land in executing or maintaining any work or carrying on any operations in pursuance of a notice served under clause (*b*) of sub-section (*1*) of section 6 shall be charged to—

(*i*) all owners of mines in which are employed persons residing in the settlement or part, and

(*ii*) all persons who receive any royalty, rent or fine from such mines:

Provided that, if it can be shown to the satisfaction of the Board that the insanitary condition is distinctly referable to any act or omission on the part of one or more mine-owners in respect to his or their property, the Board may direct that the expenses incurred shall be payable by such owner or owners only.

(*3*) Save in the case specified in the proviso to sub-section (*2*), the expenses referred to in sub-sections (*1*) and (*2*) shall be charged to the said owners and persons in such proportions as the [illegible] may from time to time direct.

The Bengal Mining Settlements Act, 1912.

(*Section 11.*)

Provided that the assessment shall be based—

(*i*) in the case of owners of mines, on the output of their mines; and

(*ii*) in the case of the receivers of any royalty, rent or fine, on the road cess payable by such persons.

(*4*) All expenses chargeable under this section shall be recoverable as if they were arrears of land-revenue.

(*5*) When any expenses incurred by any holder of land in executing or maintaining any work or carrying on any operations in pursuance of a notice served under clause (*b*) of sub-section (*1*) of section 6, have been recovered, they shall be repaid to him:

Provided that, if any question arises as to the amount of expenses incurred by such landholder, the award of the Mines Board of Health shall, subject to an appeal to the Commissioner, be final.

11. (*1*) The Local Government may, by notification in the local official Gazette, make rules for carrying out the purposes and objects of this Act in respect of all mining settlements or any groups or classes of mining settlements.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(*a*) provide for the nomination, appointment and tenure of office of members of a Mines Board of Health, and regulate the procedure of such Board and the powers and functions of the Chairman;

(*b*) regulate all expenditure to be incurred by a Mines Board of Health, and the methods under which sums due to it may be calculated and recovered;

(*c*) regulate the duties and powers of Sanitary Officers, and provide for appeals from their orders;

(*d*) prescribe the duties of owners, agents and managers of mines in respect of mining settlements, and of all persons acting under them;

(*e*) prescribe the matters in respect of which notices, returns and reports shall be furnished by owners, agents and managers of mines, the form of such notices, returns and reports, the persons and authorities to whom they are to be furnished, and the particulars to be contained in them;

(*f*) prescribe the plans (if any) to be kept by owners, agents and managers of mines in respect of mining settlements, and the manner and places in which they are to be kept for purposes of record;

(*g*) provide for the supply of filtered, boiled or other water, and for sanitation and conservancy, in mining settlements;

(*h*) provide for the taking of measures to prevent the outbreak or spread of dangerous epidemic disease in mining settlements;

(*i*) provide against the accumulation of water in mining settlements.

(*3*) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(*4*) The date to be specified as that on or after which a draft of rules proposed to be made under this section will be taken into consideration shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(5) Where a Mining Board has been constituted under section 9 of the Indian Mines Act, 1901, any rule to be made under this Act shall, before it is published for criticism under sub-section (3), be referred to the Mining Board, and the rule shall not be so published until the said Board has been consulted as to the suitability of its provisions. VIII of 1901.

(6) All rules made under this section shall be published in the local official Gazette, and, on such publication, shall have effect as if enacted in this Act.

12. A Sanitary Officer may, within any mining settlement for which he is appointed,—

Powers of Sanitary Officers.

(*a*) make such examination and inquiry as he thinks fit, in order to ascertain whether the provisions of this Act and of the rules and orders made thereunder are observed;

(*b*) enter, with such assistants (if any) as he thinks fit, inspect and examine any mining settlement or any part thereof, at all reasonable times by day or by night;

(*c*) examine into, and make inquiry respecting, the sanitary condition of any mining settlement or any part thereof, and the sufficiency of the rules for the time being in force in the settlement; and

(*d*) do all other things required of him by or under this Act.

13. The owners, agents and managers of mines in which are employed persons residing in any mining settlement, or

Facilities to be afforded to Sanitary Officers.

the owners of the land occupied by such settlement, if they are not the owners of such mines,

shall furnish the Sanitary Officer, on requisition, with all reasonable facilities for making any entry, inspection, examination or inquiry under this Act, in relation to the sanitary condition of such settlement.

14. A Mines Board of Health shall have the powers of a Civil Court for the purpose of enforcing the attendance of witnesses and compelling the production of documents; and every person required by any such Board to furnish information before it shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code. XLV of 1860

Powers of Mines Boards of Health for obtaining evidence.

15. (1) Whoever obstructs any Sanitary Officer in the discharge of his duties under this Act, or refuses or wilfully neglects to furnish him with the means necessary for making any entry, inspection, examination or inquiry thereunder in relation to any mining settlement, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Penalties for offences.

(2) Whoever makes, gives or delivers any notice or return required by or under this Act which contains a statement, entry or detail which is not, to the best of his knowledge or belief, true, shall be punishable with fine which may extend to five hundred rupees.

(3) Whoever—

(*a*) fails to comply with any requisition or order made under any provision of this Act or of any rule or order made thereunder; or

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(*Sections 16-19.*)

(*b*) contravenes any provision of this Act or any rule or order thereunder, for the breach of which no penalty is otherwise provided,

shall be punishable with fine which may extend to two hundred rupees, and, in the case of a continuing breach under clause (*a*) of this sub-section, with a further fine which may extend to fifty rupees for every day during which the breach is proved to have been persisted in after the date of the receipt by him of the requisition or order referred to in that clause.

(*4*) All fines realised under this section shall be made over to the Mines Board of Health at whose instance the prosecution was instituted, to be employed in furtherance of the objects of this Act.

Prosecution of owner, agent or manager.

16. No prosecution shall be instituted against any owner, agent or manager of a mine for any offence against this Act or any rule or order thereunder, except at the instance of a Mines Board of Health.

Limitation of prosecutions.

17. No Court shall take cognizance of any offence against this Act or any rule or order thereunder, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Cognizance of offences.

18. No Court inferior to that of a Magistrate of the first class or Sub-divisional Magistrate shall try any offence against this Act or any rule or order thereunder which—

(*a*) is alleged to have been committed by any owner, agent or manager of a mine, or

(*b*) is punishable with imprisonment.

Power of Local Government to alter or rescind orders.

19. The Local Government may reverse or modify any order passed under this Act by any authority.

CALCUTTA;
The 29th March, 1912.

A. W. WATSON,
Offg. Secretary to the Bengal Legislative Council.

Act of the Governor-General's Council assented to by the Governor-General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

THE following Act of the Governor-General in India in Council received the assent of the Governor-General on the 26th March, 1912, and is hereby promulgated for general information:—

ACT No. VII OF 1912.

THE BENGAL, BIHAR AND ORISSA AND ASSAM LAWS ACT, 1912.

AN ACT

TO

Make certain provisions regarding the application of the law in force in the Presidency of Fort William in Bengal, the Province of Bihar and Orissa and the Province of Assam.

WHEREAS a Governor and an Executive Council have been appointed for the Presidency of Fort William in Bengal;

And whereas, by Proclamation published under Notification No. 290, dated the twenty-second day of March 1912, the Governor-General in Council, with the sanction of His Majesty, has been pleased to declare and appoint that, on and from the first day of April 1912, the territory mentioned in Schedule A shall be and continue subject to the said Presidency of Fort William in Bengal;

And whereas, by Proclamation published under Notification No 289, dated the twenty-second day of March 1912, the Governor-General, with the sanction of His Majesty, has been pleased to constitute the territory mentioned in Schedule B to be, for the purposes of the Indian Councils Act, 1861, a Province to which the provisions of that Act touching the making of Laws and Regulations for the peace and good government of the Presidencies of Fort St George and Bombay shall be applicable, and to direct that the said Province shall be called the Province of Bihar and Orissa, and further to appoint a Lieutenant-Governor of that Province; 24 & 25 Vict., c. 67.

And whereas, by Proclamation published under Notification No. 291, dated the twenty-second day of March 1912, the Governor-General in Council, with the sanction and approbation of the Secretary of State for India, has been pleased to take under his immediate authority and management the territory mentioned in Schedule C, which was formerly included within the Province of Eastern Bengal and Assam, and to form the same into a Chief Commissionership, to be called the Chief Commissionership of Assam, and further to appoint a Chief Commissioner therefor;

And whereas it is expedient to make certain provisions regarding the application of the law in force in the territories affected by the said Proclamations;

It is hereby enacted as follows :—

Short title and commencement.

1. (*1*) This Act may be called the Bengal, Bihar and Orissa and Assam Laws Act, 1912; and

(*2*) It shall come into force on the first day of April 1912.

Saving of territorial application of enactments.

2. The Proclamations referred to in the preamble shall not be deemed to have effected any change in the territorial application of any enactment, notwithstanding that such enactment may be expressed to apply or extend to the territories for the time being under a particular administration.

Construction of certain references in enactments in force in territory mentioned in Schedules A, B and C.

3. All enactments made by any authority in British India, and all notifications, orders, schemes, rules, forms and by-laws issued, made or prescribed under such enactments, which, immediately before the commencement of this Act, were in force in, or prescribed for, any of the territory mentioned in Schedule A, Schedule B or Schedule C, shall, in their application to that territory, be construed as if references therein to the authorities, territory or Gazettes mentioned in column 1 of Schedule D were references to the authorities, territory or Gazettes respectively mentioned or referred to opposite thereto in column 2 of that Schedule:

Provided that the Governor-General in Council may, by notification in the Gazette of India, direct that any function of the Chief Commissioner of Assam under any such enactment, notification, order, scheme, rule, form or by-law shall be discharged by the Governor-General in Council and not by the said Chief Commissioner.

Constitution of Board of Revenue in Bihar and Orissa.

4. There shall be a Board of Revenue for the Province of Bihar and Orissa, to which the provisions of the Bengal Board of Revenue Regulation, 1822, and the Bengal Board of Revenue Act, 1850, shall, so far as may be, apply.

III of 1822.
XLIV of 1850.

Powers to Courts and Local Governments for facilitating application of enactments.

5. For the purpose of facilitating the application to the territory, or any part thereof, mentioned in Schedule A, Schedule B or Schedule C of any enactment passed before the commencement of this Act, or of any notification, order, scheme, rule, form or by-law made under any such enactment,—

(*a*) any Court may, subject to the other provisions of this Act, construe the enactment, notification, order, scheme, rule, form or by-law with such alterations, not affecting the substance, as may be necessary or proper to adapt it to the matter before the Court; and

(*b*) the Local Government may, by notification in the local official Gazette, direct by what officer any authority or power shall be exercisable; and any such notification shall have effect as if enacted in this Act.

Pending proceedings.

6. Nothing in this Act shall affect any proceeding which, at the commencement thereof, is pending in or in respect of any of the territory mentioned in Schedule A, Schedule B or Schedule C; and every such proceeding shall be continued as if this Act had not been passed.

Amendments of Acts.

7. The enactments specified in Schedule E are hereby amended to the extent and in the manner specified in the fourth column thereof.

Repeal.

8. The Bengal and Assam Laws Act, 1905, is hereby repealed. VII of 1905

SCHEDULE A.

(See sections 3, 5 and 6.)

THE PRESIDENCY OF FORT WILLIAM IN BENGAL.

Part I.

The Chittagong Division, comprising the districts of Chittagong, the Chittagong Hill-tracts, Noakhali and Tippera;

the Dacca Division, comprising the districts of Bakarganj, Dacca, Faridpur and Mymensingh;

the Rajshahi Division, comprising the districts of Bogra, Dinajpur, Jalpaiguri, Malda, Pabna, Rajshahi and Rangpur.

Part II.

The Burdwan Division, comprising the districts of Bankura, Birbhum, Burdwan, Hooghly, Howrah and Midnapur;

the Presidency Division, comprising the town of Calcutta and the districts of Jessore, Khulna, Murshidabad, Nadia and the 24-Parganas; and

the district of Darjeeling.

SCHEDULE B.

THE PROVINCE OF BIHAR AND ORISSA.

The districts of Bhagalpur, Monghyr, Purnea and the Santhal Parganas, in the Bhagalpur Division;

the Patna Division, comprising the districts of Gaya, Patna and Shahabad;

the Tirhut Division, comprising the districts of Champaran, Darbhanga, Muzaffarpur and Saran;

the Chota Nagpur Division, comprising the districts of Hazaribagh, Manbhum, Palamau, Ranchi and Singbhum; and

the Orissa Division comprising the districts of Angul, Balasore, Cuttack, Puri and Sambalpur.

SCHEDULE C.

THE PROVINCE OF ASSAM.

The Assam Valley Districts Division, comprising the districts of Darrang, Garo Hills, Goalpara, Kamrup, Lakhimpur, Nowgong and Sibsagar; and

the Surma Valley and Hill Districts Division, comprising the districts of Cachar, Khasi and Jaintia Hills, Lushai Hills, Naga Hills and Sylhet.

SCHEDULE D.

[*Cf.* Act VII of 1905, Sch. D.]

(*See section 3.*)

Part I.—Construction of enactments, etc., in force in the territory mentioned in Schedule A (the Presidency of Fort William in Bengal).

1	2
References.	Constructions
1. The Local Government of Bengal.	The Governor in Council of Fort William in Bengal.
2. The Local Government of Eastern Bengal and Assam.	
3. The Board of Revenue for Eastern Bengal and Assam	The Board of Revenue for Bengal.
4. The Chief Controlling Revenue Authority.	
5 The Chief Revenue-Authority.	
6. All officers and official bodies not mentioned in the foregoing clauses 2 to 5 (except the Treasurer of Charitable Endowments) whose authority extended, immediately before the commencement of this Act, over the Province of Eastern Bengal and Assam generally, inclusive of the territory mentioned in Part I of Schedule A.	(*a*) The respective officers and official bodies who immediately before the commencement of this Act exercised similar functions in the Province of Bengal; or (*b*) such other officers or official bodies, respectively, as the Governor in Council of Fort William in Bengal may, by notification in the local official Gazette, direct.
7. The local official Gazette (English or Vernacular, as the case may be) of the Government of Eastern Bengal and Assam.	The local official Gazette (English or Vernacular as the case may be) of the Government of Bengal.

SCHEDULE D—*contd.*

Part II.—Construction of enactments, etc., in force in the territory mentioned in Schedule B (the Province of Bihar and Orissa).

1	2
References.	Constructions.
8. The Local Government of Bengal.	The Local Government of Bihar and Orissa.
9. The Local Government of the Central Provinces.	
10. The Board of Revenue for Bengal	The Board of Revenue for Bihar and Orissa.
11. The Chief Controlling Revenue-Authority	
12. The Chief Revenue-Authority.	
13. The Court of Wards of the Central Provinces	
14. The Superintendent of Government Wards in the Central Provinces.	
15. The Judicial Commissioner of the Central Provinces	The High Court of Judicature at Fort William in Bengal.
16. All officers and official bodies not mentioned in the foregoing clauses 8 to 15 (except the Treasurer of Charitable Endowments) whose authority extended, immediately before the commencement of this Act, over the Province of Bengal generally, inclusive of the territory mentioned in Schedule B.	Such officers or official bodies, respectively, as the Local Government may, by notification in the local official Gazette, direct.
17. The local official Gazette (English or Vernacular, as the case may be) of the Government of Bengal or the Chief Commissionership of the Central Provinces.	The local official Gazette (English or Vernacular, as the case may be) of the Government of Bihar and Orissa.

Part III.—Construction of enactments, etc., in force in the territory mentioned in Schedule C (the Province of Assam).

1	2
References	Constructions.
18. The Local Government of Bengal.	The Chief Commissioner of Assam.
19 The Local Government of Eastern Bengal and Assam.	
20. The Board of Revenue for Bengal.	
21. The Board of Revenue for Eastern Bengal and Assam.	
22. The Chief Controlling Revenue-Authority.	
23 The Chief Revenue-Authority.	

SCHEDULE D—*concld.*

1	2
References.	Constructions.
24. All officers and official bodies not mentioned in the foregoing clauses 18 to 23 (except the Treasurer of Charitable Endowments) whose authority extended, immediately before the commencement of this Act, over the Province of Eastern Bengal and Assam generally, inclusive of the territory mentioned in Schedule C.	Such officers or official bodies, respectively, as the Chief Commissioner of Assam may, by notification in the local official Gazette, direct.
25. The Chief Commissionership of Assam.	The territory mentioned in Schedule C.
26. The local official Gazette (English or Vernacular, as the case may be) of the Government of Bengal or the Government of Eastern Bengal and Assam.	The local official Gazette (English or Vernacular, as the case may be) of the Chief Commissionership of Assam.

SCHEDULE E.

(*See section 7*)

1	2	3	4
Year.	No.	Short Title.	Amendments.
1877	I	The Specific Relief Act, 1877.	In section 45 (*f*), for the words "the Lieutenant-Governor of Bengal" substitute the words "the Governor in Council of Fort William in Bengal."
1882	XV	The Presidency Small Cause Courts Act, 1882.	In section 92, for the words "and Bombay" substitute the words "Bombay and Fort William in Bengal" and omit the words "the Lieutenant-Governor of Bengal."
1903	X	The Victoria Memorial Act, 1903.	In section 2 (1) (*b*), for the words "the Lieutenant-Governor of Bengal" substitute the words "the Governor of Fort William in Bengal."
1910	X	The Indian Museum Act, 1910.	In section 2 (1) (*c*), for the words "the Lieutenant-Governor of Bengal" substitute the words "the Governor of Fort William in Bengal."

W. H. VINCENT,

Secretary to the Government of India.

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